FIRST REPORT



OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO CONSIDER THE REFORM

OF THE

JUDICIAL ESTABLISHMENTS, JUDICIAL PROCEDURE, AND LAWS

OF

I N D I A,

&c.

Presented to both Houses of Parliament by Command of Her Majesty.



LONDON:
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FOR HER MAJESTY'S STATIONERY OFFICE.
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GENERAL CONTENTS.

COMMISSION.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John M'Pherson Macleod, Esquire, John Abraham Francis Hawkins, Esquire, Thomas Flower Ellis, Esquire, and Robert Lowe, Esquire, Barrister-at-Law, Greeting:

Whereas by an Act passed in the Sixteenth and Seventeenth Years of Our Reign, reciting "That whereas by an Act of the Third and Fourth Years "of King William the Fourth it was provided that Commissioners to be "appointed thereunder, and to be styled the Indian Law Commissioners, "should inquire into the Jurisdiction, Powers, and Rules of the existing Courts "of Justice and Police Establishments in the Territories in the Possession and "under the Government of the East India Company, and all existing Forms "of Judicial Procedure, and into the Nature and Operation of all Laws, "whether civil or criminal, written or customary, prevailing and in force in any "Part of the said Territories, and should from Time to Time make Reports, "in which they should fully set forth the Result of their Inquiries, and should "from Time to Time suggest such Alterations as might, in their Opinion, be "beneficially made in the said Courts of Justice and Police Establishments, "Forms of Judicial Procedure and Laws, due Regard being had to the Dis-"tinction of Castes, Difference of Religion, and the Manners and Opinions "prevailing among different Races and in different Parts of the said Territories;" and reciting, "That whereas the Indian Law Commissioners from Time to "Time appointed under the said Act have, in a Series of Reports, recommended "extensive Alterations in the Judicial Establishments, Judicial Procedure, and "Laws established and in force in India, and have set forth in detail the "Provisions which they have proposed to be established by Law for giving "effect to certain of their Recommendations, and such Reports have been "transmitted from Time to Time to the said Court of Directors; but on the "greater Part of such Reports and Recommendations no final Decision has "been had;" it is among other things enacted, that it shall be lawful for Her Majesty at any Time after the passing of the Act, by Commission under the Royal Sign Manual, to appoint such and so many Persons in England as to Her Majesty may seem fit to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them.

Now know ye, therefore, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John M'Pherson Macleod, John Abraham Francis Hawkins, Thomas Flower Ellis, and Robert Lowe, or any Three or more of you, to make a diligent and full Inquiry into and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. And We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company. And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved Frederick Millett, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Twenty-ninth Day of November 1853, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,
(Signed) PALMERSTON.

COMMISSION.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John Macpherson Macleod, Esquire, Thomas Flower Ellis, Esquire, Robert Lowe, Esquire, Barrister-at-Law, and Frederic Millett, Esquire, Greeting:

Whereas We did, by Warrant under Our Royal Sign Manual bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, appoint you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, and Robert Lowe, together with Our trusty and well-beloved John Abraham Francis Hawkins, to be Our Commissioners to examine and consider the Recommendations of the Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as might by or with the Sanction of the Commissioners for the Affairs of India be referred to you for Consideration.

Now know ye, that We have revoked and determined, and do by these Presents revoke and determine the said Warrant bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, and every Matter and Thing therein contained. **And** We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, Robert Lowe, and Frederic Millett, or any Three or more of you, to make a diligent and full Inquiry into, and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. **And** We do by these Presents give and grant unto you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company.

And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved John Abraham Francis Hawkins, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Seventeenth Day of March 1854, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,

(Signed) PALMERSTON

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

Your Majesty having been pleased, in pursuance of the provisions of the 16th and 17th Victoria, c. 98. s. 22., to issue a Commission authorizing and appointing us to examine and consider the recommendations of the Indian Law Commissioners, and the enactments proposed by them for the reform of the judicial establishments, judicial procedure, and laws of India, and such other matters in relation to the reform of the said judicial establishments, judicial procedure, and laws, as may, by or with the sanction of the Commissioners for the Affairs of India, be referred to us; we applied ourselves to our duties without any delay.

Along with our Commission we received a letter from the President of the Board of Commissioners for the Affairs of India, notifying to us the subjects to which the Board thought that our attention should be directed in the first instance. "The intention," it is stated in that letter, "of amalgamating the "Supreme and the Sudder Courts of each of the Presidencies has already been "announced to Parliament, and the first matters which we are anxious that "you should take into your consideration are those preliminary measures "which will be necessary for this purpose."

After due deliberation, we were of opinion that the most expedient course was, in the first instance, to prepare measures for effecting the desired object at one Presidency only. It appeared to us that the undertaking to be commenced would thus be simplified, and that the subsequent extension of the measure to the other Presidencies would be comparatively an easy task. We have accordingly commenced the discharge of our duties by preparing a plan for the amalgamation of the Supreme Court of Judicature at Fort William in Bengal with the Sudder Dewanny and Nizamut Adawlut, as well as a simple and uniform Code of Civil and Criminal Procedure, applicable both to the High Court to be so formed, and to all inferior Courts within the limits of its jurisdiction.

In order fully to understand our opinions and recommendations on these important subjects, it is expedient to refer to the outlines of the constitution and procedure of the existing Courts, which will be found in our Appendix.

We propose to abolish the present Supreme Court and Sudder Court, and to substitute for them a single tribunal, which for the sake of distinction we have called the High Court. A majority of the Commissioners think that this High Court should never consist of less than eight members, of whom three should be appointed by the Crown and the rest by the Governor General in Council:

That the judges to be appointed by the Crown should be selected from barristers of England and Ireland. and members of the Faculty of Advocates in Scotland, of not less than five years standing:

Those to be appointed by the Governor General in Council from members of the Covenanted Civil Service of not less than ten years standing;

Barristers of England and Ireland, and members of the Faculty of Advocates in Scotland, who shall have been for not less than five years admitted as barristers and advocates of the Supreme Court or of the High Court, whether they may be practitioners at the bar or officers of either of these Courts or holders of office under the Government;

Persons not being members of the Covenanted Civil Service, who shall have been for not less than ten years in the judicial service of the Government;

Persons who have been for not less than ten years vakeels;

Persons who shall have belonged to the two last-mentioned classes for periods amounting together to not less than ten years.

A majority think that all the judges of the High Court should hold their offices during the pleasure of the Crown ; and we all think that it should be competent to the Governor General in Council to suspend, till the pleasure of the Crown is known, any judge holding office during the pleasure of the Crown; and also that the Chief Justice should, as vacancies occur, be appointed by the Crown.

In the letter addressed by the President of the Board of Commissioners for the Affairs of India to this Commission on the 30th November 1853, the following passage occurs :

" Another indispensable preliminary to the amalgamation of the highest " Courts, would seem to be the formation of a subordinate Court, in the presi- " dency towns, which may relieve the new Court of so much of its original " jurisdiction as to leave sufficient time for the transaction of its appellate " business."

We have carefully considered this suggestion, and a majority of the Commission are of opinion that the object of the India Board (the leaving namely, the High Court sufficient time for the transaction of its appellate business,) will be better attained by enabling the High Court to divide itself into several Courts, more than one of which, whether in the exercise of the original jurisdiction now vested in the Supreme Court, or of the appellate jurisdiction to be presently described, may be sitting at one time, than by establishing a subordinate Court as suggested.

It is possible that the amount of business may render it necessary to increase the number of judges in the High Court. Experience alone can enable the Government to say with certainty whether this increase should take place, and to what extent it should be carried.

We propose that the local limits of the jurisdiction of the High Court shall be coincident with those of the Small Cause Court at Calcutta. Many changes may be ultimately found requisite in the law to be administered by the High Court ; for the present, we propose that this Court, on the civil side, shall have such admiralty, ecclesiastical, and insolvency jurisdiction as is now vested in the Supreme Court, which will cease to exist ; and that, subject to the regulations introduced by the rules which we have prepared, the High Court shall for the present have also such legal and equitable civil jurisdiction as is now vested in the Supreme Court. In amount, its jurisdiction shall extend to all causes except those in which the value of the matter of dispute does not exceed 100 rupees, and which fall within the jurisdiction of the Small Cause Court.

It is proposed that the High Court shall have the same original criminal jurisdiction within the same local limits as that now vested in the Supreme Court sitting as a Court of Oyer and Terminer, and that it shall also have the original criminal jurisdiction now vested in the Supreme Court as a Court of Admiralty.

With regard to appellate jurisdiction we intend that the High Court shall have all that which is now exercised by the Sudder Dewanny and Nizamut Adawlut, and that it shall have a new appellate jurisdiction in civil cases, from the Courts of original jurisdiction constituted by one or more of its own judges.

We recommend the adoption of the Codes of Civil and Criminal Procedure in Calcutta, and throughout the whole of those provinces within the jurisdiction of the Supreme or Sudder Courts which are called Regulation Provinces : we are strongly inclined to think also that the Indian Legislature will find them equally applicable to the non-regulation Provinces. In the meantime, whatever powers the Supreme Court or the Sudder Court possesses in respect of those last-mentioned provinces should be transferred to the High Court.

Even with respect to the regulation provinces. when our codes shall have been adopted for them, it will be advisable, for the purpose of supplying possible omissions, to transfer to the High Court by general words all the powers now exercised by the Supreme Court or the Sudder Court, except such as may be inconsistent with any of our articles ; such transference of the powers of the Supreme Court, but of those of that Court only, will at any rate be certainly

necessary with respect to the North-west Provinces of the Bengal Presidency, until our system shall be introduced into those provinces, and a High Court established at Agra.

We have made no provision for transferring to the High Court the powers now exercised by the Supreme Court by means of the prerogative writs. The writ of habeas corpus involves questions of substantive law, and would be better considered in connexion with the *lex loci*. We believe that our proposed rules on the subjects of jurisdiction and procedure will render unnecessary any provisions in regard to the other writs.

We think that the Penal Law which the Supreme Court is now empowered to administer on its ecclesiastical side should be abolished; as far as any substitute is required for it, such substitute will be found in the provisions of the Penal Code.

We could scarcely confine our Report within reasonable limits were we to enter into any detail in this place as to the reasons which have led to the adoption of the several recommendations we have made. The proposals which we make as to the jurisdiction and procedure of the Courts inferior to the High Court, civil and criminal, will be found in the rules we have prepared; and we have appended notes to some of the articles in order to explain our views on various important points in them.

The rules which we at present propose relate only to the amalgamation of the existing Courts, to jurisdiction, and to procedure. We have not considered it within this part of our undertaking to determine finally what law should be administered in the several Courts. The subject is one which appears to us to belong more properly to the regulations to be made on the *lex loci*. We have, therefore, for the present confined ourselves to suggesting a regulation which is merely provisional, the effect of which will be to preserve the present law in this respect as far as is compatible with the rules which we have proposed as to jurisdiction and procedure.

We shall proceed to the consideration of the other subjects referred to us by the Commission.

High Court.

I.

Institution of the High Court.

There shall be one High Court of Judicature at Calcutta.

II.

Constitution of the High Court.

Such Court shall consist of not less than eight Judges, of whom three shall be appointed by the Crown, and the remainder by the Governor General in Council; and one of such Judges shall be appointed Chief Justice by the Crown.

The Judges to be appointed by the Crown shall be selected from barristers of England and Ireland and from members of the Faculty of Advocates in Scotland, of not less than five years standing.

The Judges to be appointed by the Governor General in Council shall be selected from,—

1st. Members of the Covenanted Civil Service of ten years standing; or,

2d. Barristers of England and Ireland, and members of the Faculty of Advocates in Scotland, who shall have been admitted as barristers and advocates of the Supreme Court or of the High Court in India for a period of not less than five years; whether practising at the bar, or being officers of the Court, or holding office under the Government; or,

3d. Persons who have been in the uncovenanted Judicial Service of the Government for a period of ten years, ; or,

4th. Persons who have been vakeels for a period of ten years; or,

5th. Persons who shall have acted in the two last-mentioned capacities for periods amounting together to not less than ten years.

III.

Vacancies, how to be filled up.

Every vacancy happening from time to time in the office of any judge who shall have been appointed by the Crown shall be filled up by the Crown, and every vacancy in the office of any judge appointed by the Governor General in Council shall be filled up by the Governor General in Council.

IV.

Judges to hold office during pleasure of the Crown. Governor General in Council may suspend.

The judges of the High Court shall hold their offices during the pleasure of the Crown. It shall, however, be competent to the Governor General in Council to direct the suspension of any judge of the High Court until the pleasure of the Crown be known.

V

Declaration on entering upon office.

Every judge of the High Court previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:—

"I, *A.B.*, appointed a judge of the High Court at Calcutta, do solemnly "declare that I will faithfully perform the duties of my office to the "best of my ability, knowledge, and judgment."

VI.

Seal.

The High Court shall use a seal such as shall be prescribed by the Governor General in Council.

VII.

Ministerial officers.

The High Court shall prepare and submit for the approval of the Governor General in Council, a statement of such establishment of ministerial officers as may be necessary for the due execution of all the powers and authorities committed to it, exhibiting in detail the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such further particulars as the Governor General in Council may require. When such statement has been approved by the Governor General in Council, the High Court shall proceed to make the appointments to the several offices.

VIII.

The High Court shall have power to make all the general rules for the due exercise of the civil and criminal jurisdiction vested in that Court, and also to frame forms for every proceeding in the said Court for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form, and the rules so made, and the forms so framed shall be used and observed in the said Court; provided, that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are carried into effect, have received the sanction of the Governor General in Council.

Powers of the High Court in making rules of practice, and framing forms, &c. for the High Court.

IX.

The High Court shall be empowered to approve, admit, and enrol such and so many advocates as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and plead for the suitors of the said High Court.

In admitting advocates, vakeels, and attorneys.

The High Court shall be empowered to approve, admit, and enrol such and so many vakeels as to the said High Court shall seem meet, who shall be and are hereby authorized to appear, plead, and act for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many attorneys-at-law as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and act for the suitors of the said High Court.

X.

The High Court shall have power to make rules for the qualification and admission of proper persons to be advocates, vakeels, or attorneys-at-law of the said High Court, and shall be empowered to remove, on reasonable cause, the said advocates, vakeels, or attorneys-at-law; and no person or persons whatsoever but such advocates, vakeels, or attorneys-at-law shall be allowed to appear for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such advocates or vakeels shall be allowed to plead for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such vakeels or attorneys-at-law shall be allowed to act in any other respect than as herein-before mentioned, for any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

In making rules for the qualification, &c. of advocates, vakeels, and attorneys.

Civil Jurisdiction.

XI.

The High Court shall have all the appellate jurisdiction now exercised by the Sudder Dewanny Adawlut of Bengal, and a new appellate jurisdiction from the judges of the High Court exercising original jurisdiction as hereinafter provided.

Appellate jurisdiction.

XII.

The High Court shall have superintendence over all the Courts of civil judicature subject to its appellate jurisdiction, with power to call for returns, and to direct the transfer of any civil suit or appeal from any Court to any other Court of equal or superior jurisdiction.

High Court to superintend all Civil Courts.

XIII.

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the subordinate Civil Courts, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Courts; provided that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction of the Governor General in Council.

Powers of the High Court in making rules of practice, and framing forms, &c. for the Subordinate Civil Courts.

XIV.

Local limits of original jurisdiction.

The High Court shall have original civil jurisdiction locally co-extensive with that of the present Small Cause Court; provided that it shall be in the power of the Governor General in Council, from time to time, to extend the local limits of such jurisdiction as he shall think fit.

XV.

Admiralty, ecclesiastical, and insolvency jurisdictions.

The High Court shall have the like civil and maritime jurisdiction as that now possessed by the Supreme Court as a Court of Admiralty, and the like civil jurisdiction as that now possessed by the Supreme Court as a Court of Ecclesiastical Jurisdiction, and as a Court for the Relief of Insolvent Debtors.

XVI.

Jurisdiction in suits against the East India Company.

The High Court shall have the like jurisdiction as that now possessed by the Supreme Court in suits against the East India Company.

XVII.

Original jurisdiction as to suits.

The High Court, in the exercise of its original jurisdiction, shall be empowered to receive, try, and determine suits of every description, provided the landed or other real property to which the suit may relate shall be situated, or, provided, in all other cases the cause of action shall have arisen, or the defendant at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the local limits of the ordinary original jurisdiction of the said Court, except that it shall not have any jurisdiction in cases in which the debt, or damage, or value of the property sued for does not exceed one hundred rupees, and which fall within the jurisdiction of the Small Cause Court.

XVIII.

Jurisdiction Small Cause Court.

The Small Cause Court at Calcutta, besides the matters already excepted from its jurisdiction, shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise, or anything in the nature thereof respectively, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage.

XIX.

Declaratory suit.

No suit in the High Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

XX.

High Court not to entertain original suits already heard and determined.

The High Court shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim.

XXI.

No person excepted from jurisdiction by reason of place of birth, or of descent.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of the High Court.

XXII.

More than one Court may be sitting at the same time.

More than one Court of appellate or original jurisdiction constituted by Judges of the High Court may be sitting at the same time.

XXIII.

Courts of appellate and original juris-[illegible]on, how to be [illegible]ituted.

The Chief Justice shall from time to time determine what and how many judges of the Court, whether with or without the Chief Justice, shall constitute Courts of appeal; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts of original jurisdiction.

XXIV.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more judges of the High Court to one of the Appellate Courts constituted by judges of the High Court. Appeal from the High Court of original jurisdiction to the High Court in its appellate jurisdiction.

XXV.

The judges of the High Court may be sent into the mofussil on special commission by the Governor General in Council. Judges may be sent on special commission.

Criminal Jurisdiction.

XXVI.

The High Court shall have all the jurisdiction now exercised by the Sudder Nizamut Adawlut of Bengal, as a Court of Appeal, and also as a Court for the hearing of cases referred by the Session Judges, and for the revision of cases tried by the Criminal Courts. High Court to exercise powers of Nizamut Adawlut.

XXVII.

The High Court shall be empowered to hear appeals from decisions of the Magistrates of Calcutta in criminal trials. To hear appeals from decisions of magistrates of Calcutta.

XXVIII.

The High Court shall have superintendence over all the Courts of criminal judicature subject to its appellate jurisdiction, and over all criminal Courts subordinate to such Courts, with power to call for returns, and to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court. High Court to superintend subordinate Criminal Courts.

XXIX.

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the Criminal Courts subject to its superintendence, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Courts; provided, that such rules and forms be not inconsistent with the provisions of any law in force; and shall, before they are issued, have received the sanction of the Governor General in Council. Powers of the High Court in making rules of practice and framing forms for the subordinate Criminal Courts.

XXX.

The High Court shall have original criminal jurisdiction within the local limits of its original civil jurisdiction. Local limits of original jurisdiction.

XXXI.

The High Court shall have the like criminal jurisdiction as that now possessed by the Supreme Court as a Court of Admiralty. Admiralty jurisdiction.

XXXII.

The High Court, in the exercise of its local original jurisdiction, shall be empowered to try all persons brought before it on charges preferred by the Advocate General, or by the Magistrates of Calcutta, or by any private person who shall have first obtained the leave of the Court for that purpose. Jurisdiction as to persons in Calcutta.

XXXIII.

The High Court shall have original criminal jurisdiction over all persons residing within the limits of its general jurisdiction, and shall have authority to try, at its discretion, any persons brought before it on charges preferred by the Advo- As to persons within its general jurisdiction.

cate General, or by any Magistrate or other officer specially empowered by the government to act in this behalf, or by any private person who shall have first obtained the leave of the Court for that purpose.

XXXIV.

No person excepted from jurisdiction by reason of place of birth or of descent.

No person whatever shall by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of the High Court.

XXXV.

More than one Court may be sitting at the same time.

More than one Court of appellate or original jurisdiction, or for the hearing of cases referred by the Session Judges, or for the revision of cases called for by the High Court, may be sitting at the same time.

XXXVI.

Courts for hearing referred cases.

Every Court for the hearing of cases referred by the Session Judges shall consist of three judges.

XXXVII.

Courts of appellate and original jurisdiction, &c., how to be constituted.

The Chief Justice shall, from time to time, determine what and how many judges, whether with or without the Chief Justice, shall from time to time constitute Courts of appeal; and what judges, whether with or without the Chief Justice, shall constitute Courts for the hearing of cases referred by the Session Judges; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts for the revision of cases called for by the High Court; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts of original criminal jurisdiction.

XXXVIII.

No Appeal.

Court may reserve points of law.

There shall be no appeal to the High Court from any sentence or order passed in any criminal trial before the Courts of original criminal jurisdiction constituted by one or more Judges of the High Court. It shall, however, be at the discretion of the Court to reserve any point of law for the opinion of the High Court.

XXXIX.

High Court to review on certificate of the advocate general.

Provided, that on its being certified by the advocate general, that in his judgment there is error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which have been decided by the said Court should be further considered, the High Court shall review the case, or such part of it as may be necessary, for the purpose of determining the question or questions raised by the certificate of the advocate general.

XL.

Judges may be sent on special commission.

The Judges of the High Court may be sent into the Mofussil on Special Commission by the Governor General in Council.

Power of the Government to call for Records, &c.

XLI.

Government may call for records, &c.

It shall be competent to the Government to call for records, returns, and statements, from the High Court, or from any other civil or criminal Court, in such form and manner as it may deem proper.

Civil Courts subordinate to the High Court.

I.

There shall be three grades of Judges in each zillah or district:—
Zillah Judges.
Principal Sudder Ameens.
Moonsiffs.

Grades of district judges.

II.

The Courts of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be denominated after the zillah, or city, or division in which they are respectively established.

Their Courts, how to be denominated.

III.

The appointment, suspension, and removal of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be regulated by such rules and orders as the Governor General in Council shall, from time to time, pass.

Their appointment, suspension, and removal.

IV.

Each Civil Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:

" I, *A.B.*, appointed of the Court of
" do solemnly declare that I will faithfully perform the duties of my
" office to the best of my ability, knowledge, and judgment."

Declaration on entering upon office.

V.

Each Civil Court is to use a seal, such as shall be prescribed by the Government.

Seal.

VI.

It shall rest with the Governor General in Council, upon the report of the High Court, made after such communication with the Zillah authorities as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to the several Civil Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars as the said Governor General in Council may deem proper. Upon the receipt of the instructions of the Governor General in Council, the Judges of the Civil Courts shall make the appointments to the several offices of their respective establishments.

Ministerial officers.

VII.

The Civil Courts shall be empowered to take cognizance of all suits and complaints of a civil nature, with the exception of suits their cognizance of which is barred by any Act of Parliament, or by any regulation of the Bengal Code, or by any act of the Council of India.

Civil Courts have cognizance of all suits unless specially barred,

VIII.

The Civil Courts shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim.

unless already heard and determined.

IX.

Government officers who are subject to the Civil Courts for official acts.

The Civil Courts are empowered to take cognizance of suits against collectors of the revenue and their assistants and native officers, salt agents and their assistants and native officers concerned in the manufacture of salt, opium agents and their assistants and native officers concerned in the manufacture of opium, collectors of the customs and their assistants and native officers employed in the collection of the customs, the mint and assay masters and their assistants and native officers, for acts done in their official capacity.

X.

No Person excepted from jurisdiction by reason of place of birth or of descent.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts.

This has been the law of the Bengal Presidency since the year 1836 in regard to all the Civil Courts, with the exception of that of the Moonsiff. It was extended to the Moonsiff's Court in the year 1843.

XI.

Moonsiffs, their jurisdiction.

The Moonsiffs shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts under the following pecuniary limitations; provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits to which their respective jurisdictions may extend:

Pecuniary limitation.

For money or other personal property not exceeding in amount or value the sum of two thousand five hundred rupees, provided the claim include the whole amount of the demand arising from the cause of action; but any plaintiff having cause of action for debt or damages above the sum of two thousand five hundred rupees may abandon the excess, and thereupon he shall, on proving his case, have a decree for an amount not exceeding such sum, and such decree shall be in full discharge of all demands in respect of such cause of action:

For the property or possession of land or other real property, the computed value of which shall not exceed two thousand five hundred rupees.

XII.

Jurisdiction in cases of set-off.

If a defendant claim to set off a demand against the claim of a plaintiff to an amount in excess of the ordinary jurisdiction of the Moonsiff, the Moonsiff shall, nevertheless, have authority to try the case, and shall give judgment for the recovery of any sum which upon inquiry shall appear to be due to either party.

We are of opinion that the jurisdiction of the Moonsiff should in all cases be regulated by the amount claimed by the plaintiff, and that no incidental circumstances should be permitted to prevent his cognizance of a suit once instituted in his Court.

XIII.

Principal Sudder Ameens, their jurisdiction.

The Principal Sudder Ameen shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts in which the amount claimed or the computed value of the property may exceed the sum of two thousand five hundred rupees, provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits of the district over which his jurisdiction may extend.

XIV.

To exercise the powers of Moonsiff at the Sudder station of the district.

The Principal Sudder Ameen shall further exercise the same powers as the Moonsiff within the limits of the territorial division now included in the local jurisdiction of the Moonsiff fixed at the sudder or head station of the district.

XV.

The Zillah Judge shall have concurrent original jurisdiction with that of the Principal Sudder Ameen in regard to all suits above the value of two thousand five hundred rupees; provided, however, it shall be competent to a Zillah Judge, on cause shown, to receive, try, and determine a suit within the pecuniary limitation assigned to the Moonsiff, or to direct the transfer of any suit from any Court to any other Court of equal or superior jurisdiction in his district.

Zillah Judge, original jurisdiction.

XVI.

The Zillah Judge and the Principal Sudder Ameen shall have concurrent jurisdiction, and the Moonsiff shall not have jurisdiction, in cases in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

Moonsiff's jurisdiction excluded when there is no specification of value.

XVII.

A suit for land or other real property situate within the limits of a single Zillah, but within the jurisdiction of different Moonsiffs' Courts, may, with the previous sanction of the Judge of such Zillah, be brought in any Court within the limits of which any portion of such property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such Court.

Suits for real property situate within different jurisdictions of the same Zillah.

XVIII.

In like manner, if the property be situate within the limits of different Zillah Courts, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property in suit is situate, but in such case the Court in which the suit is brought shall apply to the High Court for authority to proceed with the same; and if the suit is brought in the Court of the Principal Sudder Ameen or Moonsiff, the application shall be submitted, through the Zillah Judge, to whom such Principal Sudder Ameen or Moonsiff is subordinate.

Suits for real property situate in different Zillahs.

The rules contained in Articles XVII. and XVIII. are now in force in the Bengal Presidency, and as they have been found convenient in practice, we have retained them.

XIX.

If the property be situate partly within the limits of the ordinary original jurisdiction of the High Court, and partly within those of any other Court or Courts, the suit may be brought either in the High Court or in any other Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property is situate. If the suit is brought in any other Court than the High Court, application for authority to proceed with the same shall be made to the High Court, as directed in the last preceding article.

Suits for real property situate partly within the jurisdiction of the High Court, and partly in another jurisdiction.

XX.

No suit in any of the Civil Courts shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

Declaratory suit.

XXI.

The judicial decisions of the Courts of Justice shall be subject to revision only by the constituted Courts of appellate jurisdiction, or by themselves under the rules of the code of procedure applicable to reviews of judgment.

By whom judicial decisions may be revised.

Under the Sudder Court there are at present four grades of Courts for the administration of civil justice in the districts of the Bengal Presidency, viz., Zillah Judges, Principal Sudder Ameens, Sudder Ameens, and Moonsiffs.

The Moonsiff has original jurisdiction in all cases where the value of the property in dispute is not more than 300 rupees.

The Sudder Ameen has original jurisdiction in all cases where the value of the property in dispute is above 300 rupees and not more than 1,000 rupees.

The Principal Sudder Ameen has original jurisdiction in all cases where the value of the property in dispute is above 1,000 rupees.

The Zillah Judge has the power of withdrawing any case from the files of the Subordinate Courts for sufficient reason, and trying it himself. With this exception, his jurisdiction, under the ordinary practice as at present existing, is wholly appellate.

As the arrangement of the Courts which we propose are, in some measure, regulated by the law of appeal recommended by us in the code of civil procedure, we shall briefly advert here to the existing system of appeal, and the alterations which we suggest.

From all decisions of the Moonsiff and Sudder Ameen there is an appeal to the Zillah Judge. But if from the state of his files the Judge should deem it impracticable to dispose of all the appeals before him, he may report the matter to the Sudder Dewanny Adawlut, and obtain its permission to refer a specified number of the cases to the Principal Sudder Ameen. He ought, however, to retain enough of them on his own file to enable him to judge how business is conducted by the Moonsiffs and Sudder Ameens.

From all decisions of the Principal Sudder Ameen, where the value of the property in dispute is between 1,000 rupees and 5,000 rupees, there is an appeal to the Zillah Judge; where the value is above 5,000 rupees, the appeal is to the Sudder Dewanny Adawlut. This, and the appeal from the Moonsiff and Sudder Ameen, is called the regular appeal, and it goes to the whole merits of the case. But there is a further or special appeal to the Sudder Dewanny Adawlut from all decisions on regular appeals passed by the Zillah Judge or Principal Sudder Ameen, where the judgment appears on the face of the decree (assuming all the facts to be as there found) inconsistent with some regulation of Government, established precedent, or the Hindoo or Mahomedan law, in cases to which these are applicable.

We propose, that there shall in future be three grades of Judges in each district, viz., Zillah Judges, Principal Sudder Ameens, and Moonsiffs.

That the Moonsiff have original jurisdiction in all cases where the value of the property in dispute is not more than 2,500 rupees.

That the Principal Sudder Ameen have original jurisdiction in all cases where the value of the property in dispute is above 2,500 rupees.

That the Zillah Judge have original jurisdiction concurrent with that of the Principal Sudder Ameen, with power to withdraw, on cause shown, any case from any Court in his district, and to transfer it to any other of equal or superior jurisdiction.

It is further proposed, that there shall be an appeal from all decisions of the Principal Sudder Ameens and Moonsiffs, except in cases of the simplest kind, in which the amount in dispute does not exceed 50 rupees; the appeal in cases not exceeding 1,000 rupees to be to the Zillah Judge, and in cases exceeding that sum to the High Court at Calcutta; that there shall be an appeal from all decisions of the Zillah Judge in original cases to the High Court; and that there shall be no special appeal, unless the Zillah Judge shall certify, at the time of deciding the case, that it is one for revision by the High Court.

The foregoing arrangements, while they take away all appellate jurisdiction from the Principal Sudder Ameen, will lead to the transfer of a great part of his original jurisdiction to the Moonsiff, and will thus leave comparatively little business in the hands of the Principal Sudder Ameens. In order, however, to render the services of the Principal Sudder Ameen available in the most efficient way, it is proposed that the separate office of Moonsiff at the head station of each district shall be dispensed with, and that the Principal Sudder Ameen shall be *ex-officio* Moonsiff of a circumscribed local jurisdiction round the station. It has hitherto been the practice of the Government of India to require from the Zillah Judge, as the recognized official superintendent of the administration of justice in his district, an annual report of the character and qualifications of the native Judges holding office under him. The rules which give the Moonsiff an original jurisdiction to the extent of 2,500 rupees, and the Zillah Judge an appellate jurisdiction to the extent of 1,000 rupees, will bring the Moonsiff immediately under the eye of the High Court as well as under that of the Judge; but to invest the Principal Sudder Ameen with a jurisdiction commencing at 2,500 rupees, and to do nothing more, will entirely remove that officer from the supervision of the Zillah Judge, as far as the exercise of the Judge's appellate jurisdiction may be held to bring a native Judge under his notice. The plan proposed by us indicates a mode by which every native Judge of a district may be subjected to the direct and immediate supervision of both the controlling authorities, and that in a way calculated to avoid any collision between them.

Another point in favour of the measure may be adverted to. The Principal Sudder Ameen has been selected from among the lower grades of Judges for his character and qualifications. Merit has advanced him to his present position. He ought to be, and in most cases probably is, the most able and efficient native Judge of the district. Were a man of his stamp appointed in every district as an agent for the introduction of the new system into the Courts in which the great majority of causes are instituted, and for the exercise of the small-cause final jurisdiction proposed to be conferred on the Moonsiffs, and located, as he would be, at the Sudder station, in the largest town, or in the most populous and influential part of the zillah, it would go far to render the measure popular, and to ensure success; while, at the same time, such a Court would serve as a model and a guide for the other Courts of the district.

The foregoing suggestions involve three leading points for consideration:—

1st,—The enlargement of the jurisdiction of the Moonsiff, from 300 to 2,500 rupees.

2nd,—The reduction of the number of grades of judicial officers in each zillah from four to three, by the abolition of the office of Sudder Ameen.

3rd,—The alteration in the law of appeal.

The first point for consideration is the proposed enlargement of the jurisdiction of the Moonsiff.

While, in Bengal, the jurisdiction of the Moonsiff is limited to 300 rupees, in Madras it is extended to 1,000, and in Bombay, to 5,000 rupees. So far back as the year 1843, the Law Commission recommended to the Government of India the enlargement of the jurisdiction of the Moonsiff to the extent of 1,000 rupees. "In offering this suggestion," they say, "we have considered that the experience which the Bengal Moonsiffs have had "under the existing system, which has now been in operation more than ten years, has, no "doubt, given them a decree of judicial ability fully adequate to the extended jurisdiction "we propose to assign to them; and that, under the system of examination lately introduced, "there is reason to expect their successors will enter upon their offices with superior "qualifications."

The anticipations of the Law Commission would, in a great measure, appear, by the evidence given before the Parliamentary Committees of the session of 1853, to have been realized.

Mr. Mills and Mr. Harington the Commissioners appointed by the Government of India to prepare a Code of Civil Procedure are of opinion, that if adequate salaries be assigned to them, the jurisdiction of the Sudder Ameens might be fixed at 5,000 rupees, and that of the Moonsiffs at 1,000 rupees.

With advertence to the system of examination and selection of candidates which now prevails; to the remuneration of these officers by a higher and more adequate scale of emolument, which we think should accompany the extension of their powers to the limit we propose; and to the fact that the decisions of the Moonsiffs will be brought under the operation of the law of appeal, according to the value of the suit, to the immediate notice of the High Court as well as of the Zillah Judge, we are of opinion that the Moonsiffs in Bengal may be safely entrusted with a jurisdiction to half the extent of the jurisdiction now exercised by the Moonsiffs in Bombay, where they deal with causes of the value of 5,000 rupees.

The second point for consideration is, the abolition of the office of Sudder Ameen.

This measure was recommended by the Law Commission in the year 1842; and should the jurisdiction of the Moonsiff be enlarged to the extent proposed, there will be no need and no room for an intermediate grade between the Principal Sudder Ameen and the Moonsiff. At present the files of many of the Sudder Ameens have few causes on them, and some of them are also employed as Moonsiffs.

The last point, viz., the alteration in the law of appeal, will be noticed more fully in the proper place in the Code of Procedure.

The adoption of the rules proposed by the Commission will not, it is believed, impose any amount of labour upon the courts of appellate jurisdiction which they will not be able fully to meet.

In the year 1851, there were preferred 7,706 appeals from the decisions of the Moonsiffs. From this number, at least one half or 3,850 cases may be struck off as not appealable, leaving 3,856 appeals from the decisions of the Moonsiffs. To these must be added 672, being the number appealed from the decisions of the Sudder Ameens, making a total of 4,528 cases. From this number may fairly be deducted 20 per cent. or 900, by which number it may be presumed that the total number of appeals will be reduced by the adoption of the new system of procedure proposed to be introduced, leaving in round numbers 3,600 appeals to be disposed of by the Judge.

The dispensing with the present complicated and voluminous proceedings will lead to a further considerable reduction of labour.

In the same year, there were 771 appeals to the Zillah Judge from the decisions of the Principal Sudder Ameens in cases from 1,000 to 5,000 rupees. The whole of these must now, for the purpose of calculation, be transferred from the files of the Judges to that of the High Court; for it will make no difference in this respect that the majority of the cases heretofore tried by the Principal Sudder Ameens would henceforth be tried by the Moonsiffs. Add to these 148 appeals preferred to the Sudder Dewanny Adawlut from the decisions of the Principal Sudder Ameens in cases above 5,000 rupees, and we have a total of 919 cases appealable to the High Court, from the decisions of the native Judges. To these, again, must be added thirty-six appeals from the decisions of the Zillah Judges, making a grand total of 955 regular or first appeals to the High Court. Supposing 20 per cent. to be deducted under the new system of procedure, there remains a balance of 764 cases. Under the existing system there were 188 regular or first appeals from the decisions of the Judges and Principal Sudder Ameens. This gives an increase of 576 regular appeals. But from these there must be deducted the number of special appeals admitted from the decisions of the Judges and Principal Sudder Ameens in appeal cases, as the present law of special appeal would be entirely superseded. There were 140 of the former and 123 of the latter, making a total of 265. This would leave a total increase of 311 appeals. Against these, however, must be set 752 applications for the admission of special appeals. The code of procedure provides, moreover, for the bolition of the appeal from orders in many cases which are now appealable, and limits the dissatisfied party, in such cases, to the remedy of a regular suit.

The aggregate business of the High Court, as far as the influx of cases from the Mofussil Courts is concerned, will probably not be in excess of what it now is.

LAW TO BE ADMINISTERED.

In all cases in which a suit is brought in the first instance in the High Court, or in which it is removed from the Court of Small Causes at Calcutta to the High Court, or a question of law or equity is reserved by the Judges of the Court of Small Causes at Calcutta for the opinion of the Judges of the High Court, the Court shall (until otherwise provided) be guided in its decisions by the laws administered by Her Majesty's Supreme Court of Judicature at Fort William in Bengal, at the time of the passing of this Act, except in so far as may be inconsistent with anything herein contained. And in all cases in which a suit is brought in the first instance in any Court other than the High Court, or the Court of Small Causes at Calcutta, the Courts shall (until otherwise provided) be guided in their decisions by the laws and regulations in force at the time of the passing of this Act at the place where such Court is situate, except in so far as may be inconsistent with anything herein contained.

The object we have in view in the foregoing rule is to leave the substantive law for the present as it now stands, and we suggest that the rule (to which reference has been made in our opening remarks) be included in the Act giving effect to the Code of Procedure which we have prepared.

Proposed Code of Procedure for the Courts of Civil Judicature in Bengal.

CONTENTS.

INTRODUCTORY NOTES.

It is intended that the proposed code of civil procedure shall apply to all ordinary Civil Courts in Bengal, with the exception of the Court of Small Causes at Calcutta. The jurisdiction of that Court is limited to suits in which the property in dispute does not exceed 500 rupees; and out of the cases that fall below that pecuniary limit all of a more complicated nature are reserved by the constitution of the Court for a higher tribunal. The cases that remain are generally very simple; and the procedure of the Court seems to be well adapted to them. It might, therefore, be inexpedient to change it for a new procedure, framed for suits of all kinds. But, as the new procedure will, in the simpler class of suits, be equally expeditious and economical with that of the Court of Small Causes at Calcutta, it will not be necessary to extend the system of Courts of Small Causes to the other principal stations in the country, as has been sometimes proposed. There will thus be one procedure for all ordinary Civil Courts in Bengal, with only a single exception.

At present there are six different systems of procedure in Bengal, besides the one for the Court of Small Causes at Calcutta: four in the Supreme Court, corresponding to its common law, equity, ecclesiastical, and admiralty jurisdictions; and two in the Courts of the East India Company, one for regular, and the other for summary, suits. The procedures as well as the jurisdictions of the Supreme Court are all founded on the Charter of George III., dated 26th March 1774; and the procedures of the Company's Courts originated in a code of regulations passed by Lord Cornwallis, in 1793. That code was applicable chiefly to regular suits; and there was only one class of cases for which it was then considered necessary to provide a more summary procedure. These were suits for the forcible dispossession of disputed lands and crops. But, a few years later, the summary procedure was extended to cases connected with the collection and exaction of rent. The summary jurisdiction in cases of forcible dispossession was finally transferred to the magistrates by Act IV. of 1840 of the Indian Legislature; and the summary jurisdiction in cases of rent, which had gradually increased so as to embrace almost every question between the zemindar and ryot, was transferred, by Regulation VIII. of 1831, to the collector of land revenue. With these summary jurisdictions we do not propose to interfere.

The proposed code of procedure is not intended to apply to Military Courts of Requests. Nor is it intended to apply to the jurisdiction of the special deputy collector in what are called resumption suits. The procedure in these suits is very simple; and was framed for one very peculiar class of cases. The existing Civil Courts in Bengal, are: Her Majesty's Supreme Court, the Court of Sudder Dewanny Adawlut, the Courts of the Zillah Judge, the Principal Sudder Ameen, the Sudder Ameen and the Moonsiff, with the Small Cause Court at Calcutta. It is proposed to abolish the Court of the Sudder Ameen. The new procedure will apply to all the rest, with the exception, above stated, of the Court of Small Causes at Calcutta.

CHAPTER I.

Preliminary Rules.

I.

No institution stamp, fee, or deposit.

No stamp duty, fee, or deposit shall be required on the institution of any civil suit, or on the entry of any appeal from the decision or order of any Civil Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Civil Court, except such fees or charges as may be set forth in tables to be prepared as herein-after provided.

II.

Tables of fees and charges to be prepared.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Civil Courts comprised in any zillah by the Judge of the zillah, under the direction of the High Court, and for the High Court by the Judges thereof. And a copy of the table of fees and charges so prepared, which may be applicable to any Civil Court, shall, after the same shall have received the sanction of the Governor General in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him, than such fees or charges as may be set forth in such table.

No institution fee has ever been paid in the Supreme Court, nor, under the original system of Lord Cornwallis, was there any such fee in the Courts of the Company. The State defrayed the expense of all the judicial establishments. An institution fee, in the case of civil suits, was established by Regulation XXXVIII. of 1795, not as a source of revenue, but, as appears from the preamble to the regulation, for the purpose of preventing vexatious litigation. By Regulation VI. of 1797, the institution fees were converted into stamp duties; the preamble there assigns the same object, but adds also that of increasing the public revenue. The last purpose is the only one mentioned in Regulation I. of 1814, which further regulates these payments.

Having to provide an uniform system of procedure for India, we have thought it better on the whole to abolish the institution fee, rather than to recommend its extension to Calcutta.

III.

Parties may appear in person or by attorney.

All applications to any Civil Court, and all appearances of parties in any Civil Court, except when otherwise specially provided, may be made by the party in person, or through an attorney or vakeel duly authorized to act on his behalf. The authority shall in all cases be in writing, and shall be filed with the proper officer of the Court. When so filed, it shall be considered to be in full force until revoked, and the revocation shall be intimated in writing to the officer; and all notices given to, or processes served on, the attorney or vakeel of either party, or left at the office or ordinary residence of such attorney or vakeel, relative to the suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the attorney or vakeel represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

In Her Majesty's Supreme Court, as in the Courts at Westminster, a party is represented by two persons: the barrister, who pleads for him orally or in writing, but is restricted to these duties; and the attorney, who does everything else for him that may be required during the progress of the suit. In the Company's Courts the suitor is represented by only one person, who is called a vakeel, and pleads for him like the barrister in the Supreme Court, as well as acts for him generally in all other matters relative to the suit, like the attorney in the Supreme Court. We see no objection to a combination of these systems.

IV.

Party appearing in person to enter his name and address in a book.

In all cases in which a party shall appear in person, and the cause shall not be decided on the day of his appearance, he shall enter his name and place of abode in a book to be kept for that purpose by the proper officer of the Court, if his place of abode shall be within a radius of eight miles from the Court-house; otherwise, he shall enter in the said book the name and place of abode of some person residing within such distance of the Court-house, on whom he may wish that all notices or process in the cause should be served on his be half. And all notices or process relative to the suit which may thereafter be left

at the place so entered in the register, shall be deemed good service on the party, and shall be as effectual for all purposes relative to the suit as if the same had been served on the party himself in person, unless the Court shall otherwise direct. If no such entry as aforesaid shall be made in the said register, the fixing up of such notices or process in some conspicuous place in the office of the clerk or other proper officer of the Court, and also in some conspicuous place in the Court-house, shall in like manner be deemed to be good service, and shall be as effectual for all purposes relative to the suit as if such entry had been made, and the notice or process had been left at the place so entered in the register.

V.

Native officers or soldiers who cannot obtain leave of absence may authorize any person to appear for them;

When a native officer or soldier in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending it in person, he may authorize any member of his family or any other person to conduct and manage the suit or the defence, as the case may be, in his stead. The authority shall in all cases be in writing, and shall be signed by the native officer or soldier in the presence of his commanding officer, who shall countersign the same, and it shall be filed with the proper officer of the Court. When so filed, the counter signature of the commanding officer shall be sufficient proof that the authority was duly executed, and that the native officer or soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

VI.

Who may appear personally, or appoint an attorney or vakeel.

Any person who may be authorized, as in the last preceding Article mentioned, by a native officer or soldier to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the native officer or soldier could do if present; or he may appoint an attorney or vakeel of the Court to prosecute or defend the suit on behalf of such native officer or soldier. And all notices or process relative to the suit which may be served upon any person who shall be so authorized as aforesaid by a native officer or soldier, or upon any attorney or vakeel who shall be appointed as aforesaid by such person to act for or on behalf of such native officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on an attorney or vakeel directly appointed by him.

The two articles relative to native officers and soldiers, together with the corresponding articles XXXVI. and CLII., have been taken with some modifications from the existing practice of the Company's Courts.

CHAPTER II.

OF A SUIT TILL FINAL DECREE.

Of the Institution of Suits.

VII.

Suits to commence with summons.

All suits shall be commenced by a summons to the defendant.

VIII.

Summons how to be applied for.

The application for a summons shall be made to the Clerk or other proper officer of the Court by the party in person, or through one of the attorneys or vakeels of the Court, duly authorized to act on his behalf, by an instrument in writing, which shall be delivered to the officer at the time of making the application.

IX.

Particulars to be given with the application.

The application shall be accompanied by the following particulars, distinctly written in the language in ordinary use in proceedings before the Court, viz.—

1. The name, description, and place of abode of the plaintiff.
2. The name, description, and place of abode of the defendant, so far as they can be ascertained.

3. The relief sought for, the subject of the claim, the cause of action, and when it accrued. The following are instances:

If the suit be for money due on a bond or other written instrument:—Payment of Company's rupees   due on (a bond, tumussook, hoondee, or bill of exchange, as the case may be) for the sum of Company's rupees   , bearing date the   day of   , and payable on the   day of   .

If the suit be for the price of goods sold:—Payment of Company's rupees   on account of   maunds of (rice, indigo, sugar, or as the case may be), sold on the   day of   , and the price of which became payable on the   day of   .

If the suit be for damages for slanderous words: Payment of Company's rupees   , on account of injury done to the Plaintiff, by calling him on the   day of   , a (thug, or thief, or as the case may be), or by causing to be published on the   day of   , in a newspaper entitled the   , (or otherwise as the case may be) the following slanderous words concerning him (stating them at length, as the case may be).

4. When the claim is for any property other than money, its estimated value Company's rupees. The following are instances:

If the suit be for a Zemindary, or share in a Zemindary;—Possession of a Zemindary, or of   anas   gundas share in a Zemindary, called   situate in the zillah of   , the Sudder Jummah of which is Company's rupees   , and estimated value Company's rupees   , of which the Plaintiff was dispossessed (or forcibly or fraudulently dispossessed, if the case be so,) on the   day of   ; or to which the Plaintiff became entitled by inheritance from   , on or about the   day of   .

5. When the claim is for a declaration of right, or the fulfilment of a duty in which the plaintiff is interested, or that the defendant be restrained from the committal of any breach of a contract or other injury to the plaintiff, or for anything not susceptible of pecuniary valuation, it shall not be necessary to specify the estimated value of any property or any sum of money by way of damages.

6. In all suits by or against the Government, or one of its officers in his official capacity, or the East India Company, or any other Corporation, or any Company authorized to sue and be sued in the name of an officer or Trustees, the words "The Government," or "The Collector of   ," or otherwise as the case may be, or "The East India Company," or name of the Corporation or name or names of the officer or Trustees of the Company, shall be inserted in Nos. 1 and 2, instead of the name and description of the Plaintiff or Defendant. But in all other cases it shall be necessary to specify the names of all the parties.

This Code of Procedure contains no rules on the subject of the valuation of property in civil suits. We think it our most expedient course to leave it to the Government of India to decide whether any, and what, alterations should be made in the law on this subject, in the event of our recommendation in regard to the abolition of the institution fee being adopted.

X.

Application to be rejected if the claim is beyond the jurisdiction of the Court.

If the amount or estimated value of the claim, as stated by the plaintiff, be beyond the jurisdiction of the Court the officer shall refuse to receive the application.

XI.

Reference to be made to the Judge in a suit for property in different jurisdictions.

If the suit be for land or other real property, situate partly within the jurisdiction of the Court, and partly within the jurisdiction of some other Court or Courts, the officer shall submit the application for the order of the judge.

XII.

When the claim is within the Court's jurisdiction, the officer shall enter the particulars in a Register.

If the amount or estimated value of the claim, as stated by the plaintiff, be within the jurisdiction of the Court, the above particulars shall be entered by the officer in a book to be kept for the purpose, and called the Register of Civil Suits, and the entries shall be numbered in every year according to the order in which the application shall be made.

XIII.

The Register shall be kept in the form contained in the Schedule (A.) hereunto annexed; and a certified copy of the Register, under the seal of the Court, shall be received in evidence in all courts of justice in India. Form of the Register.

XIV.

When the plaintiff's demand is founded on any instrument in writing, as constituting or acknowledging the demand, such as a bond, tumussook, bill of exchange, hoondee, ikrar, or acknowledgment, the same shall be produced and shown to the officer at the time of applying for the summons, and a copy of the instrument shall be delivered to him at the same time, for the purpose of being served with the summons on the defendant; and if such instrument shall not be produced it shall not be received in evidence on behalf of the plaintiff at the hearing or trial of the cause, without the sanction of the Court. When there is more than one defendant, a copy of the instrument for each defendant shall be delivered to the officer; unless all the defendants are members of one joint and undivided Hindoo family, in which case one copy of the instrument will be sufficient. Document of debt should be shown to the officer.

XV.

The person applying to the officer for a summons shall state at the time of his application, whether he requires a summons for the first hearing and settlement of issues or for the final disposal of the cause. Summons may be for settlement of issues, or final disposal.

We propose that all suits shall commence with a summons to the defendant. In the body of the summons will be contained such particulars of the claim as will in general enable the defendant to prepare himself sufficiently for the defence; and on the back of the summons will be endorsed directions which will inform him what he ought to do if he means to admit or dispute the demand. He will be informed that, in the event of his disputing it, he must appear in person on the day indicated in the summons, provided with all the documentary evidence which he may wish to adduce, and prepared to answer all such questions as the judge may put to him relating to the demand or his own defence; and that, if he cannot appear in person, he must authorize some attorney or vakeel of the Court to appear for him, and produce his documents, and must instruct the attorney or vakeel in such a manner as to enable him to answer the judge's interrogatories on his behalf; and he will be warned that, if he fails to appear, in person or otherwise, judgment will be given against him by default.

In by far the greater number of suits that are brought before the Courts of justice, the whole matter in dispute may be resolved into a single issue, on which the parties may at once go to trial. There are others of a more complicated nature, where, the dispute being involved in many circumstances, some preliminary process may be required for ascertaining with precision the points that may be material to a correct decision of the case. This intermediate process is what is termed settling the issues. And it is a matter of great practical moment, with a view to the saving of time to the Court, and unnecessary expense and trouble to the parties and their witnesses, to distinguish as far as possible between this class of cases and those which admit of immediate decision. It is only by the judge after he has examined the parties, that this can be effectively done. But the plaintiff can in general form a pretty accurate idea on the subject, particularly when he is acting under professional advice. We therefore considered whether it would be advisable to leave it in all cases to his discretion to apply either for a summons to settle issues only, or for a summons for the final disposal of the case. It is clear that, in really simple cases, much time will be saved by this mode of procedure. On the other hand, it puts it in the power of the plaintiff, in every case whatever, to compel the defendant to bring witnesses whose attendance, had the business of the first hearing been confined to the settling of the issues, might have never been required at all; and thus it defeats one main object which the settling of the issues has in view. This objection it is proposed to meet by empowering the judge, in the case of such a summons, to refuse to dispose of the case finally; the hearing upon such refusal will become simply a hearing for the settling the issues; and it may be considered that the defendant, in cases which he sees to be unfit for decision without a previous settling of the issues, will rely on the judge taking this course, and will think that he may safely abstain from bringing his witnesses. In answer to which, again, it has been suggested that this is an uncertain result, which defendants may not venture to anticipate, and that, practically, the effect will be that the plaintiff may always force the defendant to bring all his witnesses to the first hearing. We are not unanimous in our decision upon this point; but the majority of the Commission are of opinion that the advantages of the proposed plan, including the vesting of such discretion in the judge, outweigh the disadvantages; and it is therefore adopted in our scheme of procedure when the plaintiff takes out such a summons. The defendant will be further warned, by the directions on the back, that he must bring his witnesses, and will be instructed how, if he cannot depend on their coming voluntarily, he may apply for summonses to compel their attendance.

Of Summoning the Defendant.

Form of Summons.

XVI.

The summons shall be in the following form, or to the following effect:—

No. of Suit
In the Court of the of
holden at
Plaintiff.
Defendant.
[Name, description, and address of Defendant.]

You are hereby summoned to appear at this Court on the day of at in the forenoon, to answer [name, description, and address of Plaintiff,] to a claim for [here state the particulars, as in the Register referred to in Article XIII.]

Dated the day of
(Signature.)

Costs of summons and service
This summons must be served on or before the day of
N.B.—See notice at back.

XVII.

Directions to be indorsed on summons to settle issues.

Special directions shall be indorsed on the summons, which, if the application be for a summons for the first hearing, and settlement of issues, shall be as follows:—

1. If you admit the Plaintiff's claim, you must deliver your admission in writing, under your signature, to the officer of the Court, together with the costs marked on the summons, five clear days before the day for appearing to this summons; but you may enter your admission at any time on or before the day of appearing, subject to the payment of further costs.

2. If you admit any part of the Plaintiff's demand, and pay to the officer of the Court the amount so admitted, together with the costs, five clear days before the day of appearance, you will avoid any further costs, unless the Plaintiff at the hearing shall prove a demand against you exceeding the sum so paid into Court.

3. If you deny the Plaintiff's claim, or any part of it, you must appear on the day fixed in the summons, and be prepared to answer all questions that may be put to you by the Judge, relating to the Plaintiff's demand, and your liability thereto, and to state any objections which you may have to make to the same.

4. You must bring all documents or instruments in writing of any description, which you may wish to produce in explanation, or as evidence of your defence to the suit, or of any counter-claim against the Plaintiff which you may desire to make a set-off to his demand against you; and, in particular, you must bring with you all or any instruments in writing or things which may be specified in any notice to produce that accompanies this summons, or that may be served on you within a reasonable time before your appearance thereto.

5. If you do not appear in person, you must employ one of the Attorneys or Vakeels of the Court to appear in your stead, and must furnish him with the documents, instruments, or things above referred to, and with any information that you possess in regard to the Plaintiff's demand, and your own defence thereto; so as to enable him to answer for you in all respects as you could do yourself if interrogated in person. And if you fail in any of these matters, and your Attorney or Vakeel is unable to answer any questions that may be put to him on your behalf by the Judge, and the Judge shall be of opinion that the documents, instruments, or things referred to, are such as you ought to have produced, or that the questions put to your Attorney or Vakeel are such as you ought to be able, or are likely to be able, to answer, if interrogated in person, the hearing of the case will be postponed, a notice will be

given to your Attorney or Vakeel requiring your persona appearance, and the production of the documents, instruments, or things referred to, and you will have to pay all the costs; and if you should fail to appear in obedience to such notice, judgment will be given against you by default.

6. If you do not appear on the day fixed in the summons, either in person or by an Attorney or Vakeel of the Court, judgment will be given against you by default.

XVIII.

Further direction on summons for final disposal of the case.

If the application be for a summons finally to dispose of the case, this further direction shall be endorsed thereon:—

7. You are required to take special notice, that the day fixed in the summons for your appearing, is appointed for the final disposal of the case, and that you must be prepared to produce all your witnesses. If you fail to do so and the Judge shall think proper to postpone the cause to another day, in consequence of your default, you will have to pay all the costs that may be incurred by the postponement. If your witnesses will not come at your request, you should apply to the Officer of the Court, either in person or by Attorney or Vakeel, not later than the day of , for subpœnas to compel their attendance.

XIX.

Time for appearance on a summons to settle issues.

If the summons be to settle the issues, the day for the appearance of the Defendant shall not be less than ten days, exclusive of the day of service and day of appearance, above the time that may be necessary for the service of the writ, such time to be computed at the rate of one day for every eight miles in a straight line that the residence of the Defendant may be distant from the Court.

XX.

Time for appearance on a summons for final disposal of the case.

If the summons be for a final disposal of the case, the day to be fixed for the appearance of the Defendant shall not be less than fifteen days (exclusive as aforesaid) above the time that may be necessary for the service of the writ, such time to be computed in the manner above mentioned.

At present, in the Supreme Court as well as in the Courts of the East India Company, suits are instituted by the filing of a written complaint; upon which a summons or order is issued to the defendant. But as the claim is stated in writing, and a written answer is required, time must be given to the defendant to prepare his answer. The appearance to the summons, then, is only what is called a technical or formal appearance; and it is understood to imply that the party summoned is always in attendance, and not so merely on the particular day on which he is required by the summons to attend. It becomes thus almost impossible for a party, whether plaintiff or defendant, to manage his suit in person. The complaint is almost invariably filed by an attorney or vakeel of the Court; and the appearance of the defendant is usually effected in the same way. The preparing and filing of the written pleadings occupy a good deal of time, which is different in the Company's Courts and in the Supreme Court, and differs in the Supreme Court according as the suit is in the common law, equity, ecclesiastical, or admiralty jurisdiction. In common law it is short; in all the others it may be extended over several months; in the Company's Courts it may be taken at an average of about three months. Without entering on the subject of pleading generally, it may be proper to say a few words in explanation of the reasons which induced us to think that written pleadings cannot be retained with advantage in India under an uniform system of procedure.

The pleadings under the different jurisdictions of the Supreme Court are very dissimilar, and it would be extremely difficult to adapt the pleadings of any one of the jurisdictions to the others, and scarcely possible to adapt any of them to the procedure of the Company's Courts. Nor could the pleadings in the Company's Courts be adapted with any advantage to the procedure of the Supreme Court. It thus seems necessary to reject all the existing forms of pleading.

It is admitted on all hands that, in a great number of the cases that are brought before the public tribunals for trial, written pleadings of any kind are utterly useless. This is proved in England by the experience of the County Courts, and in India by the experience of the Court of Small Causes at Calcutta, and the practice of all Courts of Requests. The cases for which it is generally agreed that written pleadings are unsuitable may be classed generally under the head of simple debts. At Calcutta, as well as in England, written pleadings are dispensed with in cases of debt only when the debt does not exceed 50*l*., and only in judicatories whose jurisdiction is wholly summary. There seems to be no reason for

restricting this way of proceeding in matters of debt to debts of small amount, or to special tribunals confined to that particular class of cases. In India suits for debt bear a very large proportion to the suits of all other descriptions; and suits for rent (as the title to property is not tried in that form) may also be considered as suits for simple debts. But the suits for debt and rent, which were disposed of by all the Company's Courts in Bengal, in the year 1850 amounted together to 68,156, while the whole number of suits disposed of in that year was no more than 88,390; thus making the former more than three fourths of the whole. This large proportion of the suits that are annually tried in Bengal may thus be said to be unnecessarily delayed by the system of pleading existing in the Company's Courts for a period of time averaging about three months in each case, and would be unnecessarily delayed for a considerable portion of it under any system of written pleadings, however expeditious, that could be devised. This argument ought to be decisive of the question as to written pleadings, unless it can be shown that there are cases, in which written pleadings are so necessary that their rejection would amount to a serious impediment to the administration of justice. There are some cases in which, no doubt, it will be for the convenience of the judge, as well as of the parties, that the material facts should be reduced to a written form. But for these cases it will be seen that sufficient provision has been made in our scheme of procedure; and there is no reason whatever why the cases that admit of immediate decision should be delayed for them. As a general rule, we have, therefore, thought it best to dispense with written pleadings in an uniform system of procedure for India.

Mr. Mills and Mr. Harington, the Commissioners appointed in India to prepare a code of civil procedure, having had to consider the Company's Courts only, propose to retain written pleadings with some restrictions and modifications.

First. They propose to separate from the jurisdiction of the ordinary tribunals suits for small debts and demands, and to transfer them to Courts specially appointed to try them in a summary manner, without formal pleadings.

Secondly. They propose to retain and extend the summary jurisdiction of the collectors of Land Revenue in suits relating to the collection and exaction of rent. These they distribute into 21 classes, all of which are to be disposed of summarily, and without formal pleadings.

Thirdly. They propose to retain and extend a peculiar jurisdiction now exercised by the Zillah Judge, in questions relating to mortgages of land, all of which are also to be disposed of summarily, and without pleadings.

So far the proposals of the Commissioners appointed in India tend to confirm our view respecting written pleadings.

Fourthly. They propose that the existing pleadings in the Company's Courts, which, "now consist of a plaint, an answer, a reply, and a rejoinder," and which they justly characterize as being "generally full of irrelevant matter and repetition, and a mixture of "pleading and argument," should be cut down to mere statements of facts and reduced to particular forms, and should be confined to the plaint and answer. They say, most truly, that there exists in the public mind "a strong dissatisfaction" with the existing practice in regard to written pleadings; and they add, that they had therefore considered whether they could not make the system of pleading which they had prescribed for simple demands of small amount applicable to all cases; but "such a mode of procedure is not," in their opinion, "suited to the habits of a civilized people, whose laws are not uniform, whose usages are peculiar, and whose transactions are frequently of a complex nature." They add: "moreover we do not think it would be safe in suits relating to real property and other cases "of complexity and difficulty, to give to the Courts, as constituted and composed in this "country, the power of reducing to writing the oral statements of the parties and of "settling the issues altogether thereon."

We concur in these views, so far as to think that it would be convenient to have written statements of the parties in the cases of complexity and difficulty referred to; and the scheme now proposed provides for this. We do not think, however, that, because written statements may be found convenient in some cases, the parties should be compelled to furnish them in all the cases which are not excepted under the first three of the above heads.

With regard to the restriction of pleadings to a plaint and answer, we think that, if written pleadings are to be used at all, this restriction would be objectionable. A defendant can almost always so frame his answer, if he is allowed to introduce fresh matter, as to make it a complete avoidance of the demand. But this permission is given to the defendant by the proposed Code of Mr. Mills and Mr. Harington; and it is admitted, that "the plaintiff, however honestly disposed, may be really taken by surprise." To meet this, however, it is thought to be sufficient that the Court has, "the power to interrogate the pleaders of the parties; or, if necessary, summon and question "the parties themselves in respect of" such new matter. It is obvious that, if new matter set forth in the answer can be thus sufficiently met without a written reply from the plaintiff, so also may the original matter of the plaint be sufficiently met by the defendant at the trial without any written answer.

Service of Summons on the Defendant.

XXI.

Summons shall be served by the officer.

The writ of summons shall be delivered to the Bailiff or other proper officer of the Court, to be served by himself or one of his subordinates, and such officer shall be responsible for its due service.

XXII.

A day on or before which the summons must be served, shall be written at the foot of the summons before delivery to the officer, and the day so to be written shall be always such as to allow the Defendant the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

Latest day of service to be written at foot of the summons.

XXIII.

Service of the summons shall be made by exhibiting the original under the seal of the Court, and delivering or tendering a copy thereof and of the endorsements thereon, together with any notice to produce, and copies of any documents or instruments in writing that may have been delivered to the Clerk, or proper officer of the Court, at the time of applying for the summons, for the purpose of being served therewith.

How service shall be made.

XXIV.

When there are several Defendants, service of the summons shall be made on each Defendant, unless all the Defendants are members of one joint and undivided Hindoo family; in which case service on any one of the Defendants shall be sufficient, if made at the family dwelling-house of the joint and undivided family.

When there are several defendants

XXV.

Whenever it may be practicable, the service shall in all cases be on the Defendant in person, unless he have an accredited agent, empowered to accept the service; in which case service on such agent shall be sufficient.

Service to be on defendant in person, or on his accredited agent.

XXVI.

Any Attorney or Vakeel of the Court, or any other person residing within its local jurisdiction, may be appointed an accredited agent to receive the services of summonses and all other judicial process. The appointment shall always be in writing, and shall be filed with the Clerk or other proper officer of the Court to which the agent is accredited, and shall be considered to be in full force until it shall be revoked, and such revocation be recorded with the proper officer of the Court.

Who may be an agent for this purpose.

XXVII.

The Attorney to the East India Company shall be accounted the accredited Agent of the Government and of the East India Company for the purpose of receiving services of summonses, and all other judicial process against the Government or the East India Company that may be issued out of the High Court, and the Government Pleader in all other Courts shall in like manner be accounted the accredited Agent of the Government for the purpose of receiving services of summonses and all other judicial process against the Government, issuing out of the Court in which he may be the Pleader of Government.

Accredited agents of Government and the East India Company.

XXVIII.

When the Defendant cannot be found, and has no accredited agent empowered to accept the service, it may be made on any adult member of his family residing with him.

If defendant cannot be found, service may be made on a member of his family.

XXIX.

In all cases where the summons is served on the Defendant personally, or any agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service to be indorsed on the original summons.

The person served is to be required to indorse the summons.

XXX.

If the summons cannot be served, it is to be returned with an indorsement of non-service.

When the Defendant cannot be found, and there is no agent or other person empowered to accept the service, nor any member of his family on whom the same can be served, the serving officer shall fix the copy of the summons with its indorsement, and accompanying notice and copies of documents, if any be annexed thereto, on the outer door of the Defendant's dwelling-house; and if he shall have no dwelling-house in the place, the serving officer shall return the summons to the Court from whence it issued with an indorsement thereon that he has been unable to serve it.

XXXI.

If served, time and manner of service to be indorsed.

The serving officer shall in all cases in which the summons has been served, endorse on the original summons the time and the manner when and how it was served.

XXXII.

If the summons be returned unserved, the Plaintiff may apply to the Court to substitute service.

In all cases in which a summons shall be returned to the Court without having been served on the Defendant, the Plaintiff shall be at liberty to apply to the Court for an order to substitute some other mode of serving the summons for service in the manner above specified; and if it shall appear to the Court that there is reasonable ground for believing that the Defendant is keeping out of the way of its officer, for the purpose of avoiding the service of the summons, it shall pass an order directing that the summons may be served by fixing up copies thereof, with its endorsement and accompanying notice and copies of documents, if any be annexed thereto, upon some conspicuous place in the Court House and also upon the door of the house in which the Defendant shall have last resided if it be known where he last resided; or that the summons shall be served in such other manner as the Court shall think proper. And the service which shall be substituted by order of the Court, shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

XXXIII.

When service is substituted, the time for appearance is to be enlarged.

Whenever service shall be substituted by order of the Court, by virtue of the power contained in the last article, the time for the appearance of the Defendant shall be enlarged, so as to allow him the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

XXXIV.

How the summons is to be served when the Defendant is out of the jurisdiction.

If the Defendant be resident within the jurisdiction of any other Court than that in which the suit may be instituted, and has no accredited agent empowered to accept the service, the summons shall be transmitted by the Clerk or proper officer of the Court to the Clerk or proper officer of the Court within whose jurisdiction the Defendant may reside, with such enlargement of the time for appearance as the case may require. And the Clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the Bailiff or other proper officer of his own Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be retransmitted to the Clerk or proper officer of the Court from whence it originally issued.

XXXV.

How it is to be served when he is out of the Territories of the East India Company.

If the defendant be resident at some place out of the territories of the East India Company, and have no agent empowered to accept the service, and the suit be for landed or other real property, the summons may be served on any person in charge of the landed or other real property to which the suit may relate, and the service shall be as effectual for all purposes of the suit as if the person had been duly empowered to accept it. If there shall be no person in charge of the landed or other real property to which the suit relates, on whom the summons can be served, or if the suit shall not relate to landed or other real property, but the defendant is nevertheless subject to the jurisdiction of the Court by reason of the cause of action having arisen

within the limits of its jurisdiction, a copy of the summons and of the endorsements thereon, together with any notice to produce, and any copies of any documents or instruments in writing that may have been delivered to the clerk or other proper officer of the Court, at the time of applying for the summons for the purpose of being served therewith, shall be addressed to the defendant at the place where he may reside, and forwarded to him by post: Provided that in all cases in which a defendant is resident at some place out of the territories of the East India Company, the time for the appearance of the defendant shall be regulated by the time which may be required for communication by post between the place at which the Court is holden and the place where the defendant resides; and provided also, that if on the day fixed for the hearing of the cause, or on any other day subsequent thereto on which the cause may be called on, the defendant shall not appear in person, or by attorney or vakeel, the plaintiff shall apply to the judge, and it shall be lawful for the judge to direct that the plaintiff shall be at liberty to proceed with his suit in such manner and subject to such conditions as to such judge may seem meet; provided always, that the plaintiff shall prove his case to the satisfaction of the judge, and the making such proof shall be a condition precedent to his obtaining judgment.

XXXVI.

How native officers and soldiers are to be served.

When the defendant is a native officer or soldier in the service of the Government, a copy of the summons and of the indorsements thereon, together with any notice to produce and any copies of any documents or instruments in writing that may have been delivered to the clerk or other proper officer of the Court for the purpose of being served therewith, shall be transmitted by the Judge to the commanding officer of the corps to which the native officer or soldier shall belong, for the purpose of being served on such native officer or soldier. The commanding officer, after causing the summons and its accompanying notices and copies of documents to be served on the party to whom it is addressed if practicable, shall return the summons to the Judge, with the written acknowledgment of the party indorsed thereon. If from any cause the summons cannot be served upon the native officer or soldier to whom it is addressed, it shall be returned by the commanding officer to the Judge from whom it may have been received, with information of the cause which has prevented the service of it. In such case the Court shall either make a further reference with the view of causing the summons to be duly communicated to the native officer or soldier, or shall adopt such other measures for that purpose as, on a consideration of the circumstances of each case, shall appear to be proper.

The rules for the service of the summons differ but slightly from those at present in use in the Company's Courts. The object is to make sure, as far as possible, that the summons comes to the knowledge of the defendant. To accomplish this, it is required that the summons shall be served personally on the defendant himself, or an agent authorized to accept the service, or a member of his family, or that it shall be attached to the door of his dwelling-house. Where the service cannot be effected in any of these ways the summons must be returned to the Court unserved. But, if the defendant avoids the service, or is out of the territories of the East India Company, application may be made to the judge, who is authorized to prescribe the manner in which the cause is to proceed.

How privileged Persons are to be summoned.

XXXVII.

Substitutes for the summons in the case of privileged persons.

Nothing contained in the preceding rules shall be construed to prevent the Court from substituting for the summons, a letter, Roobekaree, or other appropriate proceeding under the seal of the Court, when the person whose presence is required is of a rank or class in society which entitles him to such mark of consideration; and in such cases the letter or other proceeding shall be treated in all respects as a summons, and shall be accompanied with a copy of the directions which would ordinarily be indorsed on the summons, and with any notice and copies of any other documents which would have been delivered therewith, if a summons had been issued for the appearance of the party.

XXXVIII.

List of privileged persons to be kept by the officer of Court.

A list of the persons (if any) residing within the limits of the Court's jurisdiction, who are entitled to the mark of consideration mentioned in the last article, shall be kept in the office of the Clerk or other proper officer of the Court, and any application for a summons against a person whose name is entered in the said list, shall be referred by the officer to the Judge for his order before the summons shall be issued to the Defendant.

XXXIX.

Service how to be made on privileged persons.

When a letter or other proceeding is sent to a party on account of his being of a class or rank of society that entitles him to that distinction, it may be transmitted through the post-office, or by a special messenger selected by the Court, or in any other manner that the Court may deem sufficient; unless the party shall have an accredited agent empowered to accept service of judicial process; in which case delivery to such agent shall be sufficient service. When the letter is transmitted through the post-office, or by special messenger, proof that it was duly posted, or was delivered to the messenger, shall be sufficient proof of its due service, in the absence of evidence to the contrary.

The rules as to summoning privileged persons are also taken from the existing practice of the Company's Courts, with some modifications.

How Persons not before the Court may be made Parties to a Suit.

XL.

In certain cases of inheritance, a proclamation for claimants to be issued at the same time as the summons to the Defendant.

In every suit concerning the succession or right of inheritance to a zemindary, talook, land, house, or other real property, to which there may be more persons than one who by the Hindoo or Mahomedan law (regard being had to the religion of the claimants) would be entitled to a portion of the estate, there shall be issued, at the same time with the summons to the particular Defendant or Defendants, and in addition thereto, a proclamation setting forth the names of the parties, the nature of the suit, the day fixed for the hearing of the cause, and whether it have been fixed for the first hearing and settlement of issues, or for final disposal, and calling on all persons having any claim to any share or interest in the property, to appear on the said day, either in person or by an Attorney or Vakeel of the Court, and be prepared to state their claims to the Court, and to support them by proper evidence.

XLI.

Proclamation how to be published.

The proclamation shall be read aloud by the officer employed to serve the summons on some public place, within the limits of the zemindary, talook, land, or other real property concerning which the suit may be brought, and copies thereof shall be fixed up in some conspicuous part of the Court-house, and on the outer door of the family dwelling house of the person the right of succession or inheritance to whose property is in question, or of the house in which he may have last resided. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the suit may be brought.

XLII.

Proclamation may be issued in any suit by order of the Court.

If in any suit it shall appear to the Court at any hearing of the cause, that all the persons who may be entitled to some share or interest in the property in dispute, have not been made parties to the suit, it shall be competent to the Court to adjourn the hearing of the cause to a future day to be fixed, and to direct a proclamation to be issued calling upon all persons having any claim to any share or interest in the property to appear on the day so to be fixed, and be prepared to state their claims to the Court, and to

support them by proper evidence. If the suit shall relate to the succession or right of inheritance to a zemindary, talook, land, house, or other real property, the proclamation shall be published or made known in the manner prescribed in the last preceding article. If the suit shall relate to any other matter or thing, a copy of the proclamation shall be fixed up in some conspicuous part of the Court house, and it shall also be competent to the judge to direct that the proclamation shall be published or made known in such other manner as he may think proper. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall in all cases be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular judge in whose Court the suit may be brought.

XLIII.

If any claimant shall appear on the day fixed in any proclamation issued under the provisions of Article XL. or of Article XLII., the Court shall investigate his claim and pronounce a decision thereon, in the same way as if he had been made originally a party to the suit.

If any claimant appear he is to be treated as a party to the suit.

The judges of the Company's Courts are required by the existing regulations, in giving judgment in any suit relating to the succession to Hindoo or Mahomedan property, so to frame their decrees as to provide for the division of the property among all the persons entitled to share in it. But there are no corresponding rules of procedure for cases of this kind. In suits in equity in the Supreme Court, it is also frequently found necessary to have persons represented who have not been made parties to the suit. The rules under this section are intended to provide the means for bringing before the Court all such persons as may be entitled to any part of the property in dispute, in any case in which that may be considered necessary for the ends of justice.

Of Suits against the Government and its Officers, and the East India Company.

XLIV.

If the suit be against the Government, or against any of its officers for acts which the Plaintiff at the time of applying for the summons alleges to have been done in an official capacity, the application for the summons shall be referred by the officer to the Judge for his order before any summons shall be issued to the Defendant.

If the suit be against the Government or its officers, the application for a summons is to be referred to the Judge.

XLV.

If it shall appear to the Judge, after examining the applicant, that the act complained of was done pursuant to a special order originating with the Government, or with the Board of Revenue, and that the officer by whom the act was done is not liable to be sued for it, the Judge shall direct the person who may have made the application for the summons to apply in the first place to the Government by petition, stating wherein he considers himself injured under the Regulations of the Bengal code, or the Acts of the Council of India, and praying that the Government will order the Court of Civil Judicature in which the cause may be cognizable, to try the contested points or matters by the Regulations or Acts. If the Government shall deem proper to grant the prayer of such petition, and the plaintiff shall file an order to the above effect with the clerk or proper officer of the Court; or if a plaintiff shall in the first instance, with his application for a summons in a case of the aforesaid description, produce an order from the Government to the effect aforesaid, and it shall appear to the Judge that the case is within his jurisdiction and cognizable under the order, he shall direct the summons to be issued to the officer by whom the act complained of may have been done, in the same way as is herein-before prescribed for the issuing of summonses to private individuals; and in no case shall a summons be issued to any defendant in a case of the nature aforesaid without an order to the effect aforesaid.

In cases where the Civil Courts have no direct jurisdiction against the officers of Government, the Applicant is to be referred to the Government.

XLVI.

If it shall appear that the act complained of was done without any order of the Government, or of the Board of Revenue, and that the act complained

In cases where the Civil Courts have direct jurisdiction,

against the officers of the Government, the Judge is to refer to the Board of Revenue.

of is one for which the officer by whom it was done is declared amenable under the Regulations of the Bengal code or the Acts of the Council of India, the Judge shall transmit the particulars of the claim as set forth in the Register referred to in Article XIII., to the Board of Revenue, together with copies of any documents or instruments in writing that may have been delivered to the clerk or proper officer of the Court at the time of applying for the summons, for the purpose of being served therewith.

XLVII.

How the Board of Revenue is to proceed in cases referred to it.

The Board of Revenue, after making due inquiries on the subject, shall determine whether the party complaining is entitled to redress directly from Government, or whether he shall be left to prosecute the case in the regular course of law; and if they shall be of opinion that the party should be left to prosecute the case in the regular course of law, they shall inform the Judge by whom the case may have been referred to them of their determination to that effect, and also whether the case is to be defended by the public officer as a suit against the Government, or by the person affected by the complaint in his individual capacity.

XLVIII.

When the Summons is to be issued.

At the expiration of days from the transmission, or at any earlier period when the Judge may receive intimation from the Board of Revenue that it has been decided that the party complaining shall be left to prosecute his case in the regular course of law, the Judge shall direct a summons to be issued to the officer whose act has been complained of, in the same manner as is herein-before prescribed for the issuing of summonses to private individuals.

The blank in this article is left to be filled up by the local government.

XLIX.

Suits against the East India Company.

If the suit be against the East India Company, the summons shall be served on their attorney at Calcutta, who shall appear for the said Company on the day therein mentioned, to answer on their behalf to the suit of the plaintiff. And if the said attorney shall appear on the day mentioned in the summons, and answer to the suit of the plaintiff, or if he shall not appear on the said day, or on any subsequent day on which his appearance may be required during the progress of the suit, or if he shall so appear, but shall refuse or be unable to answer any question that may be put to him by the Court relative to the suit, the procedure shall be the same in all respects as is herein-after provided for suits against individual parties, or as near thereto as the circumstances of the case will admit.

The rules on the subject of suits against the Government and its Officers, and the East India Company, are taken from the existing practice of the Company's Courts, with some modifications; they are extended so as to make them applicable to the High Court in suits against the East India Company, who, according to the existing law, can be sued in their corporate capacity in the Supreme Court only.

Of Arrest before Judgment.

L.

When Defendant is about to leave the jurisdiction Plaintiff may apply that security be taken for his appearance.

If in any suit the Defendant, with intent to avoid or delay the Plaintiff, is about to leave the jurisdiction, the Plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the Court to demand that security be taken for the appearance of the Defendant, to answer any judgment that may be passed against him in the suit.

LI.

How the Court is to proceed on such application.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the Defendant is about to leave its jurisdiction, with the intent of avoiding or delaying the Plaintiff, it shall issue a warrant to the proper officer, enjoining him to bring the Defendant before the Court, that he may give good and sufficient bail for his appearance at any time

when called upon while the suit is pending, and until execution of any decree that may be passed against him in the suit; the surety or sureties undertaking, in default of such appearance, to pay, to an extent to be fixed by the Judge and specified in the warrant, any sum of money that may be adjudged against him in the suit, with costs.

LII.

Sureties may apply to be relieved from their engagements.

The sureties for the personal appearance of the Defendant may, at any time apply to the Court to be relieved from their engagements as sureties, whereupon the Court shall issue its warrant directing that the Defendant be brought before it. On the appearance of the Defendant to such warrant, or on his voluntary surrender, the Judge shall direct the engagement of the sureties to be cancelled, and shall call upon the Defendant to give fresh security, and in default thereof shall commit him to custody.

LIII.

Deposit in lieu of bail.

Should a Defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit, and forthwith discharge the Defendant.

LIV.

Defendant to be committed to custody if he cannot give security.

In the event of the Defendant neither furnishing security, nor offering a sufficient deposit, he may be committed to custody until the decree shall have been passed.

LV.

When the Defendant is about to leave the country the application to be made to the High Court.

If in any suit the Defendant is about to leave the jurisdiction of the High Court with intent to remain absent so long that the Plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the Defendant, the Plaintiff may make an application to the High Court, or to any Judge or Judges thereof, to the effect and in the manner aforesaid, and the procedure shall be in all respects the same as herein-before provided, except that the security for the appearance of the Defendant shall be for his appearance in the Court, whatever it may be, in which the suit is pending.

The rules on arrest before judgment have been taken, with some alterations, from the practice of the Company's Courts.

Of Sequestration before Judgment.

LVI.

In certain cases Plaintiff may apply for a sequestration of Defendant's property.

If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, it shall be lawful for the Court, on the application of the plaintiff in manner aforesaid, either at the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, when required; and on his failing to give such security, to direct that any property real or personal belonging to the defendant, or any debts due to him, or any money standing in his name or to his account and in deposit in any court of justice, or any office of Government, or at his credit in any bank, or any interest or dividends payable or thereafter to become payable on any Government paper or shares in the capital or joint stock of any banking, railway, or other public company or corporation, standing in his name, or such a portion of such property, debts, or money as may be sufficient to fulfil the decree, shall be attached, and held in sequestration until the further order of the Court.

LVII.

Application, how to be made.

The application shall be accompanied with the following particulars distinctly written in the language in use in proceedings before the Court, viz. the nature and amount of the claim, the property required to be sequestrated, and the supposed value of each article or item thereof; and the Plaintiff shall, at the time of making the application, declare that the claim is a just one, and that the Defendant is about to dispose of or remove his property in manner aforesaid.

LVIII.

Defendant may be called on for security.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the Defendant intends to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, and if the Plaintiff shall in person or by his agent enter into a bond rendering himself liable in such sum as may be judged adequate for all injury arising from the sequestration, in the event of his demand being disallowed, either wholly or in part, the Court shall thereupon issue a warrant to the proper officer commanding him to require security from the Defendant, in such sum as may be specified in the order, to produce and place at the Court's disposal, when required, the said property, or a portion thereof sufficient to fulfil the decree.

LIX.

If security is not provided property may be sequestrated.

If such security is not furnished within the time specified in the order, the Court shall direct that the property, debts, or money mentioned in the particulars which accompanied the plaintiff's application, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached, and kept under sequestration until further order.

LX.

Process for taking security and for sequestration may be simultaneous.

The process for requiring security and for attachment and sequestration, when the property shall consist of goods and chattels, or other personal estate and effects, may be issued successively or simultaneously, as the Court shall think proper.

LXI.

How the sequestration is to be made.

The attachment and sequestration shall be made, according to the respective natures of the property to be attached and sequestrated, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money.

LXII.

Sequestration may be removed when security is furnished.

In all cases of sequestration before judgment, the Court which passed the order for the sequestration shall at any time remove the same, on the Defendant's furnishing security as above required, together with security for the costs of the sequestration.

LXIII.

Compensation for needless sequestration.

If, on the trial of the suit, it shall be discovered that the sequestration was applied for on insufficient grounds, or if the Plaintiff's claim is disallowed, either wholly or in part, the Court shall (unless the Defendant shall in preference seek redress by a civil action for damages) award against the Plaintiff in its decree the whole of the amount specified in his penalty bond, or such part thereof as it may deem a reasonable compensation to the Defendant for the expense or injury occasioned to him by the Plaintiff.

LXIV.

Sequestration not to bar the execution of decrees or injure third parties.

Sequestrations before judgment shall not bar any person holding a decree against the Defendant from attaching the property under sequestration, or affect the rights of persons not parties to the suit.

LXV.

But if the party at whose instance the property was sequestrated points out other property of the Defendant unattached, the creditor shall be bound in the first instance to attach and sell such property in execution of his decree, before selling the property under sequestration.

But person holding the decree is first to attach any other property of the Defendant that may be pointed out.

LXVI.

Whenever lands paying revenue to Government form the subject of a suit, if the party in possession of such lands shall neglect to pay the Government revenue, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue due previously to the sale, (and with or without security at the discretion of the Court,) be put in immediate possession of the lands, and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of 1 per cent. per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause.

Special case in which Plaintiff may be put in immediate possession of land the subject of suit.

The rules on sequestration before judgment have been taken, with some alterations, from the practice of the Company's Courts.

Of Injunctions.

LXVII.

In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the cause is in danger of being wasted or damaged by any party to the suit, it shall be lawful to the Court to issue its injunction to such party, commanding him to refrain from doing the particular act or acts complained of, or to give such other orders for the purpose of staying and preventing him from wasting or damaging the property, as to the Court may seem meet. And in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a cause, it shall be lawful to the Court to appoint a receiver or manager of such property, and if need be to remove the person or persons in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper.

Cases in which an injunction to stay waste may be granted;

Or in which a receiver or manager may be appointed.

LXVIII.

In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff at any time after the commencement of the suit, and whether before or after judgment, to apply *ex parte* to the Court for an injunction to restrain the defendant from the repetition, or the continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted or denied by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be enforced by imprisonment in the same manner as a decree for specific performance: provided always, that any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Special rule in actions for injunctions.

Of Withdrawing Suits.

LXIX.

How the Plaintiff may withdraw from a suit.

If the Plaintiff be desirous of withdrawing from the cause, he may give notice thereof to the Clerk or proper officer in person, or by his Attorney or Vakeel, and to the Defendant by pre-paid post letter; after the receipt of which by the Defendant he shall not be entitled to any further costs than those incurred up to its receipt, unless the Judge shall otherwise order; and proof that the letter was duly posted shall be sufficient proof of the receipt thereof by the defendant, in the absence of evidence to the contrary.

LXX.

Effects of withdrawal.

If the notice be given to the officer at any time before the day mentioned in the summons, the Plaintiff shall be at liberty to bring a fresh suit for the same matter, unless precluded by the rules for the limitation of actions. If the notice be given on or subsequent to the day mentioned in the summons, the Plaintiff shall be precluded from bringing a fresh suit for the same matter, unless he shall have previously obtained the consent of the Defendant, or the permission of the Judge to withdraw the suit. It shall be competent to the Judge at any time before final judgment to grant such permission on what may appear to him sufficient grounds for so doing, and on such terms as to costs or otherwise as he may deem proper.

Of the Death, Marriage, and Bankruptcy or Insolvency of Parties.

LXXI.

Suit not to abate by death.

The death of a plaintiff or defendant shall not cause the suit to abate. A note of the death shall be entered on the register of the suit, and the suit may be continued as herein-after mentioned.

LXXII.

Proceedings in case of death of one or more of several plaintiffs or defendants.

If there be two or more plaintiffs or defendants, and one or more of them should die, and if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

LXXIII.

Proceeding in case of death of one or more of several plaintiffs, where the right of action accrues to the survivor and the representative of the deceased.

If there be two or more plaintiffs, and one or more of them should die, and if the cause of action shall not survive, to the surviving plaintiff or plaintiffs alone, but shall accrue to them and the legal representative or representatives of the deceased plaintiff or plaintiffs, the Court may, on the application of the legal representative or representatives of the deceased plaintiff or plaintiffs, enter the name or names of such representative or representatives in the register of the suit in the place or stead of such deceased plaintiff or plaintiffs, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such legal representative or representatives of the deceased plaintiff or plaintiffs; and if the application be made before the trial, and there be any dispute as to the fact of the person or persons so applying being the legal representative or representatives of the deceased plaintiff or plaintiffs, the truth thereof shall be tried thereat, together with the title of the deceased plaintiff or plaintiffs, and judgment shall be given in favour of or against the person or persons making such application, as if such person or persons were originally a plaintiff or plaintiffs. If no application shall be made to the Court by any person or persons claiming to be the legal representative or representatives of the deceased plaintiff or plaintiffs, the Court shall direct a proclamation to be issued and published in the manner prescribed in articles XLI. and XLII., calling upon the legal representative or representatives of the deceased plaintiff or plaintiffs to appear on a day to be fixed in such proclamation, and to proceed with the suit in his or their stead. If any person or persons shall appear on the day mentioned in the proclamation

to proceed with the suit as the legal representative or representatives of the deceased plaintiff or plaintiffs, his or their name or names shall be entered in the register of the suit, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such person or persons so appearing as the legal representative or representatives of the deceased plaintiff or plaintiffs; and if the appearance be made before the trial, and there be any dispute as to the fact of the person or persons so appearing being the legal representative or representatives of the deceased plaintiff or plaintiffs, the truth thereof shall be tried thereat together with the title of the deceased plaintiff or plaintiffs, and judgment shall be given in favour of or against the person or persons so appearing, as if such person or persons were originally a plaintiff or plaintiffs. And if no person shall appear on the day to be fixed in the said proclamation, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and if judgment be given in favour of the defendant, the legal representative or representatives of the deceased plaintiff or plaintiffs shall be bound thereby equally with the surviving plaintiff or plaintiffs; but if judgment be given against the defendant or defendants, it shall only be to the extent of the share or shares of the surviving plaintiff or plaintiffs, and with a reservation of the rights of the legal representative or representatives of the deceased plaintiff or plaintiffs.

LXXIV.

Proceeding in case of death of sole or sole surviving plaintiff.

In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the legal representative or representatives of such plaintiff, enter the name of such representative or representatives in the place or stead of such plaintiff in the register of the suit, and the suit shall thereupon proceed; and if such application be made before the trial, and the fact be disputed, the truth thereof shall be tried thereat with the title of the deceased plaintiff, and judgment shall be given in favour of or against the person or persons making the application, as if such person or persons were originally the plaintiff or plaintiffs. If no application shall be made to the Court within what it may consider a reasonable time by any person or persons claiming to be the legal representative or representatives of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the Court to pass an order that the suit shall abate, and to award the defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate or estates of the deceased sole plaintiff or surviving plaintiff, or if the Judge shall think proper he may, on the application of the defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative or representatives of the deceased sole plaintiff or surviving plaintiff, and prosecuting the suit to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

LXXV.

Proceeding in case of death of one or more of several defendants, or of a sole or sole surviving defendant.

If there be two or more defendants, and one or more of them should die, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the clerk or other proper officer of the Court, with the following particulars distinctly written in the language in ordinary use in judicial proceedings before the Court, viz., the name, description, and place of abode of any person or persons whom he alleges to be the legal representative or representatives of such defendant or defendants, and whom he desires to be made the defendant or defendants in his or their stead, and the clerk or other proper officer of the Court shall thereupon enter the name of such representative or representatives in the register of the suit in the place or stead of such defendant or defendants, and shall issue a summons to him or them to appear on a day to be therein mentioned to defend the suit. If no application shall be made to the Court, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of such defendant or defendants to appear on a day to be fixed in such proclamation, and defend the suit. If any person or persons shall appear on the day mentioned in the proclamation, to make defence to the suit, as the legal representa-

tive or representatives of the deceased, his or their name or names shall be entered in the register of the suit, in the stead of the deceased defendant or defendants, and the suit shall proceed in the same way as if such person or persons had been originally a defendant or defendants thereto. And if no person shall appear on the day to be fixed in the said proclamation, the Court may proceed to dispose of the cause in the manner provided in Article LXXXI., or may make such order as may appear to be just and proper in the circumstances of the case.

LXXVI.

Objections which are competent to the new defendant.

In all cases in which the legal representative or representatives of a deceased defendant or defendants shall be entered in the register, in the stead of such deceased defendant or defendants, if the issues shall not have been settled before the death, the new defendant or defendants shall be entitled to make all objections which would have been competent to the deceased defendant or defendants, and in addition thereto may make such other objections to the suit as may be appropriate to and rendered necessary by his or their character of legal representative; but if the issues shall have been settled before the death, the new defendant or defendants shall be at liberty to object only by way of denial, or to make such other objection only as may be appropriate to and rendered necessary by his or their character of legal representative, unless by the leave of the judge he or they shall be permitted to object fresh matters; and in case the plaintiff shall recover he shall be entitled to the like judgment in respect of the debt or sums sought to be recovered, and in respect of the costs prior to the entry of the name of the new defendant or defendants, as he would have been entitled to against the original defendant or defendants, and in respect of the costs subsequent thereto he shall be entitled to the like judgment as in an action originally commenced against the legal representative.

LXXVII.

Marriage of a female plaintiff or defendant not to abate the suit.

The marriage of a woman, plaintiff or defendant, shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with the permission of the Court, be issued, upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree; and if in any such suit the wife shall sue or defend by attorney or vakeel appointed by her when sole, such attorney or vakeel shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the attorney or vakeel changed by authority of the Court.

LXXVIII.

Bankruptcy or insolvency when not to abate the suit.

The bankruptcy or insolvency of the plaintiff in any suit which the assignees might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the assignees shall decline to continue the suit, and give security for the costs thereof, within such reasonable time as the judge may order; but the proceedings may be stayed until such election is made; and in case the assignees neglect or refuse to continue the suit, and to give such security, within the time limited by the order, the defendant may, within eight days after such neglect or refusal, object bankruptcy or insolvency as a reason for abating the suit.

The rules for the cases of the death, marriage, and bankruptcy or insolvency, of parties, have been adopted from the English Common Law Procedure Act, 1852, 15 & 16 Vict. c. 76., with some modifications.

Of Notices to produce, and how they are to be served.

LXXIX.

Two notices in writing to be delivered to the proper officer of the Court.

Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he supposes to be in the possession or power

of another of the parties thereto, should be produced at any hearing of the cause, he shall at the earliest opportunity deliver to the Clerk or proper officer of the Court two notices in writing to the party in whose possession or power he supposes the document, writing, or other thing, to be, calling upon him to produce the document, writing, or other thing, on the day on which he wishes the same to be produced; and one of such notices shall be retained by the officer, and the other shall be delivered by him to the bailiff or proper officer, to be served in the manner herein-after mentioned:

How the notice is to be served.

1. If the party on whom the notice is to be served shall have employed an Attorney or Vakeel to act for him in the cause, the notice shall be served on such Attorney or Vakeel by delivering the notice to him personally, or by leaving it at his office, or ordinary place of residence.

2. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall have his place of abode within a radius of eight miles from the Court House, the notice shall be served on him by delivering it to him personally, or leaving it at his place of abode.

3. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall not have his place of abode within a radius of eight miles from the Court House, but shall have entered in the book, to be kept for that purpose by the proper officer, the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall be served by delivering the same to such person, or by leaving it at his place of abode.

4. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall neither have his own place of abode within a radius of eight miles from the Court House, nor shall have entered in the book to be kept for that purpose the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall in like manner be served by delivering the same to the party in person or by leaving it at his place of abode; unless the notice be for some day subsequent to the first hearing of the cause, in which case it shall be sufficient service of the notice if it be fixed up in some conspicuous place in the office of the Clerk or proper officer of the Court, and also in some conspicuous place of the Court House.

The object of the rules as to notices to produce, and the service of them, is to secure the production of documentary evidence at the trial: there is nothing at present corresponding to them in the practice of the Company's Courts. In the Supreme Court the service of such notices is left to the attorney in the cause; but we consider it preferable that notices of this description, as well as the process of the Court, should in all cases be served by its officers.

Of the Appearance of the Parties, and Judgment by Default for Non-appearance.

LXXX.

Parties must appear in person or by attorney.

On the day in that behalf mentioned in the summons, and from day to day, if necessary, until the cause is called on, the parties shall be in attendance at the Court-house in person or by an Attorney or Vakeel of the Court duly empowered to represent them in all matters relating to the prosecution or defence of the action, as the case may be.

LXXXI.

Consequences of non-appearance of a sole Plaintiff or Defendant.

If, on the day fixed for the hearing of the cause, or any other day subsequent thereto, on which the cause may be called on, neither party appears, either in person or by an Attorney or Vakeel of the Court, when duly called upon by the proper officer of the Court, the cause shall be struck out, with liberty to the Plaintiff to bring a fresh suit, unless precluded by

the rules for the limitation of actions. If the Plaintiff shall appear in person or by Attorney or Vakeel and the Defendant shall not appear in person or by Attorney or Vakeel, and it shall be proved to the satisfaction of the Judge that the summons was duly served, or if the Defendant having appeared in person or by Attorney or Vakeel shall refuse to answer to the claim ot the Plaintiff, then and in any of these cases the Judge shall pass judgment against him by default. And in like manner if the Defendant shall appear in person or by Attorney or Vakeel, and the Plaintiff shall not appear in person or by Attorney or Vakeel, or having appeared shall refuse to state his claim or to answer any questions respecting the same that the Judge may think proper to put to him, then and in any of these cases the Judge shall pass judgment against the Plaintiff by default.

This is the practice in England so far as relates to the defendant; and we consider this practice to be preferable to a trial *ex parte*, which is at present the practice in both the Supreme and the Company's Courts. Judgment by default is no more than a just consequence for the failure to appear, where it is voluntary; and, where it is involuntary, there is a remedy in the power given to the Court to set aside the judgment for sufficient cause. It is seldom that a plaintiff will wilfully absent himself; but it has been thought proper to protect defendants from being unnecessarily harassed, by giving them also the benefit of the judgment by default.

LXXXII.

When there are several plaintiffs or defendants each may authorize the other to appear for him.

When there are two or more plaintiffs, any one or more of them may be authorized to appear, plead, and act for the other or others of them; and in like manner, when there are two or more defendants, any one or more of them may be authorized to appear, plead, and act for the other or others of them; provided that the authority shall in all cases be in writing, and shall be filed with the proper officer of the Court; when so filed it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead, and act were a vakeel of the Court.

LXXXIII.

When such appearance may be made without special authority.

Nothing in the preceding Article contained shall be taken to prevent any one of two or more plaintiffs or defendants from appearing for the other or others of them respectively, without any special authority, when already entitled by law so to do by reason of unity of interest in the matter in dispute, or otherwise howsoever.

LXXXIV.

Consequence of non-appearance of one or more of several plaintiffs.

If there are two or more plaintiffs, and one or more of them shall appear in person, or by attorney or vakeel, or by a co plaintiff or co-plaintiffs duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by attorney or vakeel, or by a co-plaintiff or co-plaintiffs duly authorized or entitled as aforesaid, it shall be competent to the judge to proceed with the suit at the instance of the other plaintiff or plaintiffs who shall have appeared, in the same way as if all the plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case; and if there are two or more defendants, and one or more of them shall appear in person, or by attorney or vakeel, or by a co-defendant or co-defendants duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by attorney or vakeel, or by a co-defendant or co-defendants duly authorized or entitled as aforesaid, and if the plaintiff or plaintiffs shall consent to abandon the suit against the defendant or defendants who shall have appeared, and if judgment by default can be given against the defendant or defendants who shall not have appeared without detriment to the rights or interests of the other defendant or defendants, judgment may be given by default against the defendant or defendants who shall have so failed to appear, upon such terms as to the costs of the other defendant or defendants, or otherwise, as to the judge may seem proper; but if the plaintiff or plaintiffs shall not agree to abandon the suit against the defendant or defendants who shall have appeared, or if judgment cannot be given by default against the defendant or defendants who shall not have appeared, without detriment to the rights or interests of the defendant or defendants who shall have appeared, the judge

Consequence of non-appearance of one or more of several defendants.

shall proceed with the cause to judgment, and shall at the time of passing his judgment give such order with respect to the defendant or defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

LXXXV.

When and how judgment by default may be set aside.

In all cases of judgment against a Defendant by default, for non-appearance, he may apply, at any time before the same shall have been finally executed, to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Judge that the summons was not duly served, or that the Defendant was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the cause. And in like manner in all cases of judgment against a Plaintiff by default for non-appearance, he may apply, within a reasonable time, for an order to set aside the judgment; and if it shall be proved to the satisfaction of the Judge that the Plaintiff was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the cause. In all cases whatsoever of judgment by default, in which a Judge shall pass an order for setting aside the judgment, his order shall be final; but in all cases in which he shall reject an application to set aside a judgment by default, an appeal shall lie from his order refusing the application, to the tribunal to which his final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

LXXXVI.

When the Defendant has not been summoned in sufficient time, the Plaintiff may apply for a new summons or bring fresh suit.

If it shall not be proved to the satisfaction of the Judge that the summons was duly served on the Defendant in sufficient time to enable him to appear in person or by Attorney or Vakeel on the day fixed for the hearing of the cause, the Judge shall, at the option of the Plaintiff, either postpone the cause to a future day, and grant him a second summons to the Defendant, to be served in like manner as aforesaid, in continuation of the existing suit, or permit him to withdraw his suit, and if he shall elect to withdraw his suit, he shall be at liberty to institute a fresh suit for the same matter against the Defendant in the same Court, or in any other Court of competent jurisdiction, at any time, unless precluded by the rules for the limitation of actions.

Of the Examination of the Parties.

LXXXVII.

Examination of the parties or their attorneys.

In all suits in which both the parties appear in person or by Attorney or Vakeel before the Judge, they or their Attorneys or Vakeels may be examined orally by the Judge, and it shall be incumbent on them respectively to answer such questions in regard to the suit as he may think proper to put to them.

LXXXVIII.

Consequence of refusal or inability of attorney to answer.

If any of the parties shall appear by an Attorney or Vakeel of the Court, and such Attorney or Vakeel shall refuse, or be unable to answer any material question relating to the case, which the Judge is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Judge shall postpone the hearing of the cause to a future day, and direct that the party whose Attorney or Vakeel may have refused, or been unable to answer as aforesaid, shall attend in person on such day, and shall pay the costs of the opposite party;—and if the party so directed to attend shall fail to appear in person on the day to be so appointed, the Judge may pass judgment against him, as in case of default, or give such other order in relation to the cause as he may deem proper in the circumstances of the case.

The object of this first examination is merely to enable the judge to ascertain what is the matter in dispute between the parties. In the interrogatories which he may put to them for this purpose, some allowance must be made for misapprehension upon both sides. It is also manifest that statements made at this examination stand on a different footing from evidence given in a trial of fact. After the judge has once ascertained and recorded the points in dispute, the parties may be examined to them like other witnesses.

Of the Production of Documents.

LXXXIX.

Documentary evidence to be produced at first hearing.

The parties, or their attornies or vakeels, shall bring with them, and have in readiness at the first hearing of the cause, to be produced when called upon by the Court, all their documentary evidence of every description, and all documents, writings, or other things which may have been specified in any notice to produce which may havebeen served on them respectively within a reasonable time before the hearing of the cause; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the Court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the nonproduction of the document at the first hearing.

XC.

Exhibits may be admitted or rejected by the Court.

All exhibits produced by the parties shall be received and inspected by the Court; but it shall be competent to the Court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible.

XCI.

Unstamped documents may be received on payment of duty and penalty.

If the exhibit be a deed, instrument, or writing, chargeable with stamp-duty under the existing Regulations of the Bengal Code, or Acts of the Council of India, it shall not be received in evidence if unstamped or not sufficiently stamped, until the whole or the deficiency (as the case may be) of the stamp duty and the penalty required by the existing Regulations of the Bengal Code or Acts of the Council of India shall have been paid to the clerk or proper officer of the Court.

XCII.

Duty and penalty to be received by officer of Court.

Such officer shall, upon payment to him of the whole, or of the deficiency (as the case may be) of the stamp duty payable upon or in respect of such document, and of the penalty required by the Regulations of the Bengal Code or Acts of the Council of India, give a receipt for the amount of the duty or deficiency which the judge shall determine to be payable, and also of the penalty; and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall at the end of every month duly make a return to the collector of revenue of the Zillah of the monies (if any) which he has so received by way of duty or penalty, distinguishing between such monies, and stating the number and title of the cause and the names of the parties from whom he received such monies, and the date, if any, and description of the document, for the purpose of identifying the same; and he shall pay over the said monies to the collector of revenue, or to such person as he may appoint or authorize to receive the same; and the collector of revenue, or other proper authority, shall, upon production of the receipt herein-before mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid.

XCIII.

How admitted exhibits are to be marked.

When an exhibit is received by the Court, and admitted in evidence, it shall be endorsed with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record.

XCIV.

When an exhibit is rejected by the Court, it shall be endorsed in the manner specified in the last preceding article, with the addition of the word "rejected," and the endorsement shall be subscribed by the Judge. The exhibit shall then be returned to the party who produced it, unless the Court shall think proper, for special reasons, to reclaim it; and in all cases in which a rejected exhibit is returned a certified copy of the exhibit and the endorsement shall be kept by the Court.

Rejected exhibits to be marked and returned.

XCV.

When the time for appealing has elapsed, or in case the suit has been appealed, then after the appeal has been finally disposed of, either party shall be entitled, on application to the Court in which the exhibit may be, to receive back any document produced by him in the suit, unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice, as on suspicion of forgery.

When exhibit admitted in evidence may be returned.

XCVI.

Any exhibit may be returned before the time mentioned in the last preceding Article, if the Judge of the Court in which the document may happen to be shall think proper, for special reasons, to order its return.

May be returned sooner, for special reasons.

XCVII.

In all cases in which a document once received by a Court of Justice and admitted in evidence is restored, a copy, properly certified, shall be substituted for it in the record of the suit, and a receipt shall be given by the party receiving it in a separate receipt book kept for the purpose.

Certified copy of returned exhibits to be kept.

The rules on the subject of the production of documents are adaptations of the present practice of the Company's Courts, with some provisions taken from the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125., with regard to unstamped documents.

XCVIII.

Any Civil Court may of its own accord, or upon the application of any of the parties to a suit, send for, either from its own records or from any other public office or Court, the record of any other suit or case, and inspect the same, when the inspection of such record or any part of it shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

Court may send for papers from its own records or from other public offices or Courts.

This rule is taken from the proposed Code of Procedure of Mr. Mills and Mr. Harington the Commissioners appointed in India.

Of the Settlement of Issues.

XCIX.

If in the course of the oral examination of the parties or their Attorneys or Vakeels it shall appear that they are not at issue upon any question of law or fact, the Court may at once give judgment; and if it shall appear that they are at issue on some question of law or fact, the Judge after he shall have satisfied himself by such oral examination of the parties or their Attorneys or Vakeels, on what questions of law or fact they are really at issue, will proceed to frame and record the issues of law and fact on which the right decision of the case may appear to him to depend.

Framing of issues.

C.

For the purpose of assisting the Judge in framing the issues, the parties or their Attorneys or Vakeels may tender at the first hearing of the cause written statements of their respective cases, which statements the Judge shall

Written statements may be tendered by the parties to

assist the judge at the first hearing of the cause.

receive and peruse, and put on the record; but he may, nevertheless, frame the issues from the allegations of fact which he collects from the oral examinations, notwithstanding any difference between such allegations of fact, and the allegations of fact contained in the written statements so tendered by the parties or their Attorneys or Vakeels.

CI.

No statement to be taken thereafter unless called for by the Judge.

No such written statement shall be received after the first hearing of the cause, unless called for by the Judge under the power herein-after contained.

CII.

Judge may at any time call for a written statement.

It shall be competent to the Judge, at any time before final judgment, to call for a written statement, or an additional written statement, from any of the parties, for the purpose of assisting him to frame or amend the issues.

CIII.

How written statements are to be framed.

Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but each statement shall be confined, as much as possible, to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court.

CIV.

Judge may reject an improper statement,

or expunge irrelevant matter,

and fine party presenting it.

If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is argumentative or unnecessarily prolix, or that it contains matter irrelevant to the suit, the Judge may reject the same; and it shall not be competent to a party whose written statement has been rejected for any of these causes, to present another written statement, unless it shall be expressly called for by the Court. If the Judge think proper, he may, instead of absolutely rejecting the written statement, receive and record the same, after he shall have struck out all such parts of the written statement as he may consider to be argumentative, unnecessary, or irrelevant; and such parts of any written statement as may be so struck out by the Judge shall be disallowed upon any taxation of costs as between party and party. It shall also be competent to the Judge to impose upon the party from whose written statement he shall see fit to strike out any part, as being argumentative, unnecessary, or irrelevant, a fine not exceeding fifty rupees.

CV.

Judge may call for a person whom he thinks it proper to examine before framing the issues.

If the Judge shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the Court, or without the reading of some document not produced by any of such persons, he may adjourn the framing of the issues to a future day, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by subpœna or other suitable process.

CVI.

Amendment of issues.

At any time before the decision of the case, the Judge may amend the issues on such terms as to him shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

CVII.

Appeal.

If either party is dissatisfied with the issues as finally framed by the Court, such party may appeal upon that ground after the decision of the case.

In the great mass of cases the matter in dispute between the parties is evident from the first. In cases of more complexity it may be necessary to resolve the case into one or more distinct points; in other words, to settle the issues. To assist the judge in this operation, the parties are allowed to present written statements of what they respectively believe to be the material facts of the case; or, where they omit to present written statements, the judge may call for them if he think proper. From the statements and the oral examination of the parties he is to frame and record the issues of law and fact on which the right decision of the case may appear to him to depend; and he is to appoint the time at which the issues of fact are to be tried, or the questions of law argued.

This mode of settling the issues is not new to India. It has long been in practice in the Company's Courts; and great importance has always been attached to it by the Court of Sudder Dewanny Adawlut. It was introduced by Regulation XXVI. of 1814 of the Government of Bengal, which contains the following provisions on the subject:—Section *Tenth*. Clause *Second:* "If from the pleadings in the case the points at issue cannot be clearly ascertained, or if from any other reason further explanations may be requisite, the Court shall on the day on which the suit may be first brought to a hearing make such inquiries from the parties or their pleaders as may appear necessary, with a view to ascertain the precise object of the action and the grounds on which it is maintained, and shall record the result in their proceedings.—*Third:* The Court shall then consider and record the point or points to be established respectively by the plaintiff and defendant, and shall proceed to take the evidence which may be adduced by either party upon such points in the manner prescribed by the rules in force." The above provisions have been adopted at Madras and Bombay: and on five different occasions the Sudder Dewanny Adawlut at Calcutta has called the particular attention of its subordinate judicatories to them, requiring their strict observance. In an appeal to the Privy Council from a decision of the Sudder Dewanny Adawlut at Madras, the Lords of the Council refused to sustain the judgment of that Court mainly for the purpose of supporting and securing compliance with what they term "this most wholesome regulation." Recently, by an Act of the Indian Legislature, the provisions of the regulation have been extended to suits before the Moonsiffs; and it is believed that the provision adverted to is now in very general operation. Finally, Mr. Mills and Mr. Harington recommend its continuance by their proposed Code of Procedure.

If statement of fact be substituted for the word "pleadings" in the clauses of the regulations above cited, the settlement of issues in the manner suggested in our proposed scheme is only the continuance of an operation which is familiar to all the judges of the Company's Courts in India; and the only difference between the measure suggested by us and the present practice is, that the production of written statements, and the formality of settling the issues, are reserved by the former for the complicated cases in which the judge or the parties may think that they are required; and that by the latter they are made general, and are used in all cases, whether really requisite or not.

Of Issues by Agreement of Parties.

CVIII.

When the parties to a suit are agreed as to the question or questions of fact, or of law or equity, to be decided between them, they may, at any time after the issue of the summons, state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the Judge in the affirmative or the negative of such issue a sum of money fixed by the parties, or to be ascertained by the Judge upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that some property specified in the agreement, and in dispute in the suit, shall be delivered by one of the parties to the other of them, or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts, specified in the agreement, and having reference to the matter in dispute, either with or without the costs of the suit.

Questions of fact, or of law or equity, may be stated by the parties in the form of an issue, and an agreement may be entered into for the payment of a sum of money, or the doing or the refraining to do a particular act, according to the result of the issue.

CIX.

If the Judge shall be satisfied, after an examination of the parties, their Attorneys or Vakeels, or taking such evidence as he may deem proper, that the agreement was duly executed by the parties, and that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried or decided, he may proceed to record and try the same, and deliver his finding or opinion thereon in the same manner as if the issue had been framed by himself in an ordinary suit, and may upon his finding or deciding in such issue, give judgment for the sum so fixed by the parties or so ascertained as aforesaid, or otherwise according to the terms of the agreement; and upon

The judge, if satisfied that the agreement was executed *bonâ fide* may decree accordingly.

the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

The rules under this head have been adopted, with some alterations, from the Common Law Procedure Act, 1852, 15 & 16 Vict. c. 76.

When the Suit may be disposed of at the First Hearing.

CX.

If the summons was for a final disposal of the case, or the parties consent, suit may be decided at first hearing;

If the Court shall be satisfied that the questions of law or fact on which the parties are at issue do not require any further argument or proof than such as the parties or their Attorneys or Vakeels can at once supply, the Court may at once decide such question, if the summons have been issued for a final disposal of the cause; and if the summons have been issued for a settlement of issues only, the Court may in like manner at once decide the question, if the parties consent thereto.

CXI.

otherwise, the hearing of the case to be postponed.

When the summons has been issued for the settlement of issues only, if the parties or either of them do not consent that the Court shall at once decide the questions of law or fact on which they may be at issue, or if the questions of law or fact on which they are at issue require further argument or proof than the parties or their Attorneys or Vakeels can at once supply, the Judge shall postpone the further hearing of the cause, and shall fix a day for the production of further evidence, or for further argument, as the case may require.

Of Adjournments.

CXII.

Judge may grant time, or adjourn to a future day.

The Judge may, at any stage of the suit, grant time to the parties, or either of them, and may from time to time adjourn the hearing of the cause as he may think fit; and in all such cases the party applying for time shall pay the costs occasioned by such adjournment, unless the Judge shall otherwise direct.

CXIII.

How the Judge is to proceed if the parties fail to appear on the day fixed.

If on any day to which the hearing of the cause may be adjourned, the parties or either of them shall not appear in person or by Attorney, or Vakeel, the Court may proceed to dispose of the cause in the manner specified in Article LXXXI. or Article LXXXIV., as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

Of Summoning Witnesses.

CXIV.

Application for Summons.

The parties or their Attorneys or Vakeels may at any time obtain, on application to the Clerk or other proper officer of Court, summonses to witnesses or other persons, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in such summons any number of names may be inserted.

CXV.

Expenses of witnesses to be paid before issue of summons.

The person applying for a summons shall pay to the Clerk or proper officer of the Court such a sum of money as shall appear to the Court to be

reasonable, to defray the travelling and other expenses of each witness, or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules, if any, established by the Court to which such Court shall be immediately subordinate. The sum so paid to the officer shall be tendered to the witness or other person, at the time of serving the summons, if it can be served personally. In addition to the sum so paid, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary to defray his travelling and other expenses, and also the expenses of his detention under the summons, and in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, and the witness or other person summoned shall not be bound to give evidence, or produce any document until such sum shall be paid.

CXVI.

Every summons for the attendance of any witness or other person, shall specify the time and place at which he is required to attend, and also the purpose for which his attendance is required; and any particular document or documents which the witness or other person may be called on to produce shall be described in the summons with convenient certainty. The witness shall further be required to produce all deeds and documents in his possession relating to the subject of the suit, and shall be bound to produce them unless he shall satisfy the Judge that the notice to produce did not give him sufficient information. Time and place of attendance to be specified in summons.

CXVII.

Any person, whether a party to a suit or not, may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced, instead of attending personally to produce the same. Summons to produce a document or to assist in framing issues.

The provisions for summoning witnesses are taken generally from Act No. XIX. of 1853 of the Indian Legislature, with some alterations.

Service of Summons on a Witness.

CXVIII.

Every summons shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required. How the summons shall be served.

CXIX.

Whenever it may be practicable, the service of the summons shall in all cases be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult member of his family residing with him. Service to be on the witness, or a member of his family.

When the person required to attend cannot be found, and there is no adult member of his family on whom the summons can be served, the serving officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it. When the summons cannot be served it is to be returned to the Court.

CXXI.

Time and manner of service to be endorsed on the summons.

The serving officer shall in all cases in which the summons has been served endorse on the original summons the time and the manner where and how it was served.

CXXII.

How a summons on a witness who resides in another jurisdiction is to be served.

If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the clerk or proper officer of the Court in which the suit is pending, to the clerk or proper officer of the Court within whose jurisdiction the person required to attend may reside; and the clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the bailiff or other proper officer of his own Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be transmitted to the Clerk or proper officer of the Court from whence it originally issued.

CXXIII.

When a witness absconds his property may be attached.

If any person for whose attendance, either to give evidence or to produce a document, a summons shall be issued, cannot be served in either of the ways herein-before specified, the Court on being certified thereof by the return of the serving officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness absconds or keeps out of the way, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon or near to his house or place of abode; and if such person shall not attend at the time and place to be named in such proclamation, his property (real and personal), to such amount as the Court shall deem reasonable, (but subject to the same limitation as to the articles exempt from attachment, as in case of attachment for arrears of rent,) shall be liable, under an order of the Court, to attachment and sale.

CXXIV.

How the Court is to proceed with the witness on his appearance.

The cost of the attachment shall be borne in the first instance by the party applying for it, and the Court issuing the summons and attachment shall not proceed to sale of the property if the witness shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not notice of the proclamation in time to attend at the time and place named therein. Upon the appearance of such witness the Court shall make such order in regard to the costs of the attachment as it shall deem fit. If the witness appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not such a notice of the proclamation as aforesaid, it shall be in the discretion of the Court to order the property attached, or any part thereof, to be forfeited and sold for the purpose of satisfying all costs incurred in consequence of such default, or absconding or keeping out of the way, and any fine which the Court may deem fit to impose upon the witness under the provisions of Article CCIX., or the Court may order the property to be released from the attachment upon payment of such costs and fine as aforesaid.

The rules for serving the summonses on witnesses are taken from the existing practice of the Company's Courts as well as from the last mentioned Act, with some modifications; but, instead of being applied generally, as under the Act, to all witnesses, including the parties when required to give evidence, the rules are here restricted to cases where the witnesses are not parties to the suit.

Of the Examination of Parties as Witnesses.

CXXV.

Parties may be examined.

When a party to a suit appears in person at any hearing of the cause, he may be examined as a witness either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

CXXVI.

If any party to the suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his Attorney or Vakeel, make a special application to the Court for an order that the party do attend, and shall show, to the satisfaction of the Court, sufficient grounds in support of such application, otherwise a summons shall not be issued. Special application to be made for the examination of a party as a witness.

CXXVII.

The Court, if it think fit so to do, may, before making such order, cause notice to be given to the party or his Attorney or Vakeel, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient cause, enlarge the time for such application. The Court may first issue a notice to show cause.

CXXVIII.

In support of the cause shown, the Court shall receive any declaration in writing of the party, if signed by him and delivered into the Court by himself or his Attorney or Vakeel. May receive a written declaration in support of the cause shown.

CXXIX.

If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence. If no sufficient cause be shown, summons to issue.

The provisions relating to the examination and summoning of parties as witnesses are taken from the Indian Act No. XIX. of 1853, with some alteration as to the mode of requiring their attendance.

Attendance of Witnesses, and Consequence of Non-attendance.

CXXX.

Any person who shall be summoned to appear and give evidence in a cause shall be bound to attend at the time and place named for that purpose. Persons summoned to give evidence must attend.

CXXXI.

If any witness, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Article CXIX., shall, without lawful excuse, fail to comply with such summons, the Court may issue an order to the bailiff or other proper officer to apprehend and bring the witness before the Court. If any such person abscond or keep out of the way, so that he cannot be seized or brought before the Court, his property shall be liable to attachment and sale in the same manner as is provided in Article CXXIII. with respect to a witness on whom the service of a summons cannot be effected. Consequences of non-attendance by a witness not a party to the suit.

CXXXII.

If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition as herein-after required, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to sign his deposition, or to produce the document; after which, in the event of his persisting in his refusal, the Court may proceed to deal with him according to the provisions of Article CCIX. Consequences of refusal to give evidence.

CXXXIII.

If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document shall, without lawful excuse, fail Consequence of non-attendance or refusal of a party.

to comply with such order, or, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition, or to produce any document in his custody or possession, named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, as in case of default, or give such other order in relation to the cause as the Court may deem proper in the circumstances of the case.

CXXXIV.

Any person present in Court may be called upon to give evidence though not summoned.

Any person present in Court, whether a party or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be dealt with for any refusal to obey the order of the Court.

The provisions relating to the attendance of witnesses are taken from the Indian Act No. XIX. of 1853.

When and how Witnesses are to be examined.

CXXXV.

Witnesses must be examined at the hearing of the cause in open Court in the presence of the Judge.

On the day appointed for the hearing or trial of the cause, or on some other day to which the hearing or trial may be adjourned, the evidence of the attending witnesses shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal may lie to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over to the witness, and signed by him in the presence of the Judge and of the parties to the suit, or their Attorneys or Vakeels. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be in the discretion of the Judge to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his Attorney or Vakeel shall require it. If any question put to a witness be objected to by either of the parties, or their Attorneys or Vakeels, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of the witness while under examination. In cases where an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the Judge shall make a short memorandum of the substance of what each witness may have deposed at the trial of the cause, and such memorandum shall be written and signed with his own hand, and shall form part of the record.

CXXXVI.

But a witness may for special cause be examined immediately.

If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party, at any time after summons issued, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the other party if the day be fixed in his absence. The witness shall be examined, and his

deposition shall be taken down in writing in the manner herein-after prescribed; and the deposition so taken down may be read in evidence at the trial, or any hearing of the cause.

CXXXVII.

All witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their giving evidence, and they shall, upon such examination, be bound to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Witnesses to be examined without oath, affirmation, or warning.

The first article, as to the mode of examining witnesses, is, for the most part, taken from Act No. XIX. of 1853 of the Indian Legislature. The second relates to the examination of a witness *de bene esse*; and the third provides that witnesses shall be examined without oath or affirmation, or any warning, as a necessary preliminary to their giving evidence.

With regard to Christians, the practice of Her Majesty's Supreme Court and the practice of the Company's Courts are in all respects alike, and the same as in Courts of Justice in England. With regard to Hindoos and Mahomedans, the practice differs in some material respects.

By the charter of the Supreme Court, the judges were authorized to administer to all persons other than Christians "oaths in such manner and form as they shall esteem most "binding upon their consciences respectively." The form of oath adopted for Hindoos under this power requires them to be sworn by a Brahmin, or member of the priestly class, the witness holding his hand in a small vessel containing water from the river Ganges; and the form adopted for Mahomedans requires them to be sworn by a Moollah, or religious teacher, the witness holding a copy of the Kooran in his hands and afterwards raising it to his head. By stat. 9 G. 4. c. 74. s. 36. the judges were authorized in the case of "every "native of any country within the limits of the charter of the said United Company, who "may be required to give evidence in any case whatsoever, criminal or civil, and who "shall object on the ground of any religious scruple to take an oath in the usual form, "to permit such native to make his or her solemn affirmation or declaration in such "manner and form as the Court shall deem sufficiently binding upon his or her conscience." The form of declaration adopted by the Supreme Court under this power is as follows: "I, *A.B.*, *&c.* do solemnly declare and affirm that I will speak the whole truth touching "this matter."

In the Company's Courts the judges were directed by Regulation IV. of 1793, section 6, to administer to witnesses "such oaths as may be considered most binding on their con- "sciences according to their respective religious persuasions;" and the forms adopted were the same as those in use in the Supreme Court. But the judges were further authorized by the regulations to dispense with these forms, "if a witness shall be of rank or caste which, "according to the prejudices of the country, would render it improper to compel him to "take an oath," provided he shall subscribe a declaration in one or other of two prescribed forms, according as he shall be a Hindoo or a Mahomedan: both of these forms containing an express reference to the Supreme Being. By a subsequent provision of the Indian Legislature, Act No. V. of 1840, it was enacted that, "except in Her Majesty's Courts of "Justice" (an exception which was subsequently extended to the Courts of justices of the peace), "every individual of the classes aforesaid," viz. of the Hindoo or Mahomedan persuasion, "within the territories of the East India Company, shall make affirmation to the "following effect: 'I solemnly affirm in the presence of Almighty God, that what I state "'shall be the truth, the whole truth, and nothing but the truth.'"

The difference, then, between the practice of the Supreme Court and the practice of the Company's Courts, with regard to Hindoos and Mahomedans, is this:—In the Supreme Court witnesses of these two classes are usually sworn on the Ganges water or the Kooran respectively, except in cases in which the judges may think proper to dispense with these forms; and then the witness, instead of the oath, makes an affirmation that does not contain any reference to the Supreme Being. In the Company's Courts, again, there is one general rule for all; but the form of affirmation in use contains express mention of the "presence of "Almighty God," and is to all intents and purposes an oath.

The discretion confided to the judges of the Supreme Court has worked well. Respectable Hindoos, who used to evince the strongest repugnance to be sworn upon the Ganges water, now readily come forward to give their testimony upon the simple affirmation. And the Court itself does not appear to find much practical difficulty in the exercise of its discretion. It might, however, be unsafe to commit the like discretion to all judges of the Company's Courts, indiscriminately; and it is more agreeable to the spirit of British legislation to have one uniform rule applicable to all persons of the same class. So far, then, we give a preference to the practice of the Company's Courts. There remains the question of an affirmation with, or one without, any reference to religious sanction. In the affirmation of the Supreme Court there is nothing of the kind. In the affirmation of the Company's Courts there is a direct allusion to the Almighty. Between such an affirmation and an oath there is no real difference; and the only distinction between the affirmation and the forms of oath formerly in use is, that the former has not the adjuncts of Ganges water and the Kooran. The point for consideration is, whether it was these adjuncts that were objected to by respectable natives, or the religious sanctions implied in them, which are of the essence of every oath, and apply with exactly the same force to the affirmation contained in Act No. V. of 1840 as to the forms of oath previously in use. It would seem, from the preamble to the Act, that the framers of it were of opinion that it was only the forms, and not the substance, of the oaths then in use that were "repugnant to the consciences" of Hindoos and Mahomedans. But there is reason to think that this was a mistake, and that the "prejudices of the country," which "rendered it improper to compel" a witness of a certain rank or caste "to take an oath," are not confined to any particular forms, but have reference to that which is the substance of an oath. (See a remarkable Instance in Mill's History

of British India, Vol. 3. p. 630.) Upon this point it may be of some use to refer to the Hindoo Law, as the source from which the opinions or "prejudices" of the Hindoos in matters of this kind are likely to have been derived. Four forms of adjuration are mentioned in the Mitacshara as applicable respectively to the four great classes into which the Hindoo community is divided. The Brahmin was adjured by his veracity, the soldier by his horse or elephant and his weapons, the merchant by his kine, grain, and gold, and the mechanic or servile man by imprecating on his own head if he spoke falsely all possible curses. On him also the adjuration was "urged" or pressed home by a further admonition to the following effect:—"Those places assigned to offenders and heinous sinners, and those "places assigned to house-burners, and those assigned to the murderers of women and children; he will obtain all these places (of punishment) who gives false evidence. All the virtue practised by you, in hundreds of other worlds, will accrue to him whom by your falsehood you have injured." None of the other classes were addressed in this manner, except—and the exception is worthy of remark—when they were sunk to the level of the lowest class by having had recourse to similar occupations. "Regenerate persons" (by whom is here to be understood the three superior classes) "who tend herds of cattle, who "trade, who practise mechanical arts, who profess dancing and singing, who are hired "servants, who are usurers, let the judges exhort as if they were Sudras." Sudras were at the bottom of the social scale; and all the occupations here enumerated were those of the lower orders of society; so that the distinction was in fact the same as that which separates the upper from the lower classes at the present day. According to Hindoo notions, the latter were not to be trusted without the formalities of an oath, but the former might so be trusted; and these are probably the "prejudices which render it improper to compel "persons of rank or caste to take an oath," and which the framers of Regulation IV. of 1793 wished to respect, without knowing exactly what they were. The dispensing power given to the judges by that regulation became in consequence a dead letter; insomuch that it is believed that the judges were seldom or never called upon to exercise the power conferred upon them; and the reason is obvious: the power did not meet the wants of the natives. Indeed, if the power so conferred had answered the purpose for which it was intended, Act No. V. of 1840 would not have been required; and that Act No. V. of 1840 has not better answered the purpose is easily accounted for, from the circumstance that it did not introduce any new remedy, but only made general, by conferring upon all a remedy that was of no value as the privilege of a few. The affirmation contained in Act No. V. of 1840 does not differ in any essential particular from that contained in Regulation IV. of 1793, and has been of as little use. It is believed that in point of fact the repugnance of respectable natives to give their evidence in the Company's courts of justice is just as strong now as before the last Act was passed. These reasons appear to justify a preference of an affirmation not containing any reference to religious sanctions. But such an affirmation, though less objectionable than one containing such a reference, appears to us to have no positive utility, and we therefore think it best to dispense with oaths and affirmations altogether.

If Article CXXXVII. be adopted a corresponding alteration will be required in Clause 188 of the Penal Code, and of any other clauses thereof in which it is provided or implied that to constitute the offence of giving false evidence it is necessary that a witness should be bound by an oath or sanction tantamount to an oath.

Of Commissions to examine absent Witnesses and make local Inquiries.

CXXXVIII.

Cases in which Court may issue a Commission to examine witnesses.

When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Judge to be personally examined, or is a person exempted by law absolutely, or at the discretion of the Court, by reason of rank, sex, or other special cause, from personal appearance in Court, the Court may, on the application of any of the parties to the suit, order a Commission to issue for the examination of the witness on interrogatories or otherwise, and may, by the same or any subsequent order or orders, give all such directions for taking such examinations, as well within the jurisdiction of the Court wherein the suit shall be pending as without, as may appear reasonable and just.

Where the witness is within the Court's jurisdiction.

If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any officer of the Court, or to any subordinate Court, or to any other person or persons whom the Judge may think proper to appoint.

Where the witness is beyond the Court's jurisdiction.

If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the local jurisdiction of the High Court, but within its general jurisdiction, the Commission shall ordinarily be issued to the Court within whose particular jurisdiction the witness may reside, or which can most conveniently execute the same; but under special circumstances, which may appear to render a different course expedient, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

CXXXIX.

Where the witness is within the local jurisdiction of the High Court.

If the witness be resident within the local jurisdiction of the High Court, the Commission shall ordinarily be issued to the Court of Small Causes

at Calcutta, but may, under special circumstances, be directed to any other person or persons whom the Court issuing the Commission may think proper to appoint.

CXL.

Where the witness is beyond the general jurisdiction of the High Court.

Where the evidence is required of a witness who is resident at some place beyond the general jurisdiction of the High Court, the application for a Commission to examine the witness must in all cases be made to the High Court. If the suit in which the evidence of the witness is required be pending in some other Court than the High Court, the application must be accompanied by a certificate from the Court in which the suit is pending, that the application is made with its permission. In all cases of an application to the High Court for a Commission to examine a witness, the Commission may be issued to any person or persons whom the High Court may think proper to appoint; and whenever a Commission is issued from the High Court for the examination of a witness in a suit pending in any other Court the Commission shall be made returnable to the Court in which the suit is pending.

CXLI.

Commission to be returned with the depositions of the witnesses.

After the Commission has been duly executed, it shall be returned, together with the deposition or depositions of the witness or witnesses who may have been examined thereunder, to the Court out of which the Commission issued (except as in the last preceding article mentioned), unless otherwise directed by the order for issuing the Commission, and then it shall be returned in terms of such order, and it shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by law absolutely, or at the discretion of the Court, from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the Court, at its discretion, to authorize the reading of the deposition. And all depositions taken under any Commission which may be issued as aforesaid, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.

When depositions may be read in evidence.

CXLII.

Commission for local investigations.

In suits regarding lands or houses, or their limits or boundaries, in which the Court may deem a local investigation to be requisite or proper, for the purpose of elucidating the matters in dispute, the Court may issue a Commission to any person whom it may think proper to appoint, directing him to make such investigation, and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine, not only such witnesses as may be produced to him by the parties or any of them, but any other person or persons whom he may think proper to call upon to give evidence in the matters referred to him; and persons not attending on the requisition of the Commissioner, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the Commissioner during the investigation of the matters committed to him, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the Commissioner, as they would incur for the same offences in suits tried before the Court; provided that the Commissioner shall report the order to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order. The Commissioner shall, after such local inspection as he may deem necessary, and after reducing to writing, in the manner herein-before prescribed for taking the depositions of witnesses in the

presence of the Judge, the depositions of such witnesses as he may have examined, shall return the depositions, together with his report in writing, subscribed with his name, to the Court issuing the Commission. The report and depositions shall be taken as evidence in the cause, and shall form part of the record; but it shall be competent to the Court, or to the parties or any of them with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him, or mentioned in his report, or the manner in which he may have conducted the investigation. The Court may order such sum to be paid to the Commissioner as may be thought reasonable for his trouble and expenses, and the sum so ordered to be paid shall be considered as costs in the cause, unless the Court shall otherwise direct.

The report of the Commissioner to be taken as evidence in the cause; but he may be examined in person.

CXLIII.

A commissioner may be appointed to investigate and adjust accounts.

In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Judge to appoint any person whom he may think proper to be a Commissioner, for the purpose of making such investigation or adjustment, and to direct that the parties or their attorneys or vakeels shall attend upon the Commissioner during such investigation or adjustment. In all such cases the Judge shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioner are to be received in evidence in the case, unless the Judge may have reason to be dissatisfied with them, in which case he will make such further inquiry as may be requisite, and will pass such ultimate judgment or order as may appear to him to be right and proper in the circumstances of the case.

The provisions for Commissioners to examine absent witnesses have, with the exception of the two last, been adopted from Act No. VII. of 1841 of the Indian Legislature, with some additions and alterations. Article CXLII. is founded on an old regulation. In suits relating to disputed boundaries, it is sometimes necessary that an actual inspection and investigation on the spot should be made, either by the judge himself or by a trustworthy Commissioner in his stead. There has always been some difficulty in finding persons on whom sufficient reliance may be placed for making these investigations; and the Commissioner employed is usually accused by one or other of the parties, and frequently with too much truth, of having been corrupted by the other. Cases of greater complexity occur where there is reason to fear that he may have been tampered with by both. Hitherto the difficulty has been much aggravated by the fact that the Commissioner, though appointed to take the examination of witnesses, and to make plans of localities, could not himself be examined as a witness. The last article under this section is meant to remove this difficulty, by allowing the Commissioner to be personally examined as a witness, though, to prevent him from being unduly harassed the permission of the judge is made a condition precedent to his examination. Without some such precaution respectable persons might be deterred from accepting the office of Commissioner.

Of Judgment and Decree.

CXLIV.

When judgment is to be pronounced.

When the exhibits have been perused and considered, and the witnesses examined, and the parties have been heard in person, or by their respective Advocates, Attorneys, or Vakeels, the Court shall pronounce its judgment, either immediately or on some future day, of which due notice shall be given to the parties or their Attorneys or Vakeels.

CXLV.

Rights of all the heirs to be declared in cases of succession.

In any suit concerning the succession or right of inheritance to any zemindary, talook, land, house, or other real property, where more persons than one would, by the Hindoo or Mahomedan Law, be entitled to a portion of the estate, the decree shall adjudge the property, as far as may be practicable, among all the heirs in the proportions to which they may be respectively entitled.

CXLVI.

In all suits in which issues have been framed the Judge shall state his finding or decision on each separate issue.

The Judge to state his decision on each issue;

CXLVII.

The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the Judge shall have full power to award and apportion costs, in any manner he may deem proper, except in so far as is herein otherwise provided.

and to direct by whom costs are to be paid.

CXLVIII.

Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree that may have been passed therein, such as the expense of summoning the Defendants, fees of Advocates, Attorneys, or Vakeels, or officers of court, and subsistence money to peons or other persons employed in serving processes, charges of witnesses, and sums awarded to commissioners either in taking evidence or in local investigations.

What is included in costs.

CXLIX.

The judgment shall be pronounced in open Court, and in all Courts except the High Court it shall be imperative on the Judge to state the reasons for his judgment at the time of pronouncing the same. The judgment shall in all cases be written out and signed by the Judge. The judgment shall be written out in the vernacular language of the Judge, except when the Judge, being a native of the country, and sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, may prefer to write his judgment in English, and in that case the judgment may be written out in the English language. Whenever the judgment is written out in any other language than that which is in ordinary use in the proceedings before the Court, the judgment shall be translated into such language so being in ordinary use in the Court, and the translation shall also be signed by the Judge.

How the judgment is to be delivered.

CL.

The decree shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, the title of every exhibit produced in the cause, and the names of any witnesses who may have been examined, and a distinct statement of the issues when any may have been framed. It shall also contain an exact copy of the ordering part of the judgment or a translation thereof in the language in ordinary use in proceedings before the Court, and shall be sealed with the seal of the Court and signed by the Judge.

What the decree is to contain.

CLI.

Copies of the decree shall be furnished gratuitously to the parties or their Attorneys or Vakeels, on application to the Clerk or other proper officer of the Court.

Copies of the decree to be furnished gratuitously.

CLII.

When a native officer or soldier in the service of the Government is a party to a suit, and is not present at the time of its decision, an authenticated copy of the decree shall be transmitted by the Court to the commanding officer of the corps or detachment to which such native officer or soldier shall belong, for the purpose of its being communicated to him.

When a native officer or soldier is a party to the suit, a copy of the decree is to be sent to his commanding officer.

The provisions as to the judgment and decree embody the existing practice of the Company's Courts, with some alterations as to the language of the judgment and decree, taken from a recent Act (No. 33 of 1854) of the Legislative Council of India.

CHAPTER III.

Execution or Enforcement of Decrees.

CLIII.

How decrees are to be enforced.

If the decree be for land or other immoveable property, the same shall be delivered over to the party to whom the same may have been adjudged; if the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by imprisonment of the party adjudged to perform the same, or by attaching his or their property, and keeping the same under sequestration until further order of the Court, or by both imprisonment and sequestration if necessary; if the decree be for money, it shall be enforced by the imprisonment of the party against whom the same may have been adjudged, or the attachment and sale of his property, or by both if necessary; and if such party be other than a defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this Chapter against a defendant.

Application for Execution.

CLIV.

Application for execution how to be made.

The application for execution of a decree shall be made to the clerk or other proper officer of the Court by the applicant in person, or through his Attorney or Vakeel in the cause, or some other Attorney or Vakeel duly appointed to act for him in that behalf, in manner herein-before mentioned.

CLV.

If the person by or against whom the decree has been obtained shall die or become bankrupt or insolvent, application for execution may be made by or against his legal representative.

If any person in whose favour a decree has been passed shall die or become bankrupt or insolvent after such decree, and before execution shall be fully had thereon, application for execution of the decree may be made by or on behalf of the legal representative or representatives, or the assignee or assignees, of the person so dying or becoming bankrupt or insolvent as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly. And, in like manner, if any person against whom a decree has been passed shall die after such decree, and before execution has been fully had thereon, application for execution thereof may be made against the legal representative or representatives or the estate of the person so dying as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly.

CLVI.

Particulars to be given with the application.

The application for execution of a decree shall be accompanied with the following particulars distinctly written in the language in ordinary use in proceedings before the Court, viz., the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; the amount of the debt or damages due upon it, if the suit were for money; the amount of costs, if any were awarded; the name of the person or persons against whom the enforcement of the decree is sought; and the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, the arrest and imprisonment of the person or persons named, or attachment of his or their property.

CLVII.

Further particulars when the application is for an attachment of immoveable property.

When the application is for an attachment of the defendant's land or other immoveable property, it shall also be accompanied with an inventory or list of such property, containing such a description of each item thereof as may be sufficient to identify it, together with a specification of the defendant's share or interest therein, to the best of the applicant's belief, and so far as he has been

able to ascertain the same. And where the property is an estate paying revenue to government, or any portion of such estate, the application for an attachment shall be accompanied with an authenticated extract from the register of the collector's office, specifying the jummah of such estate, and the names and shares of the registered proprietors.

CLVIII.

Where the application is for an attachment of the defendant's moveable estate, or any part thereof, or of debts or money belonging to him, it may also be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description of each item thereof; or the plaintiff may apply for a general attachment of the defendant's moveable estate, debts, and money wheresoever the same can be found, to the amount of the judgment and costs.

The application for an attachment of moveable property may be special or general.

CLIX.

The Clerk or other proper officer of the Court, on receiving any application for execution of a decree, accompanied with the particulars above mentioned, or such of them as may be applicable to the case, shall compare the same with the original decree contained in the record of the cause; and if they shall be found to correspond therewith, shall enter a note of the application, and the date on which it was made in the register of the suit. If the particulars shall not be found to correspond with the original decree, the Clerk or other proper officer shall either return them for correction to the person making the application, or shall, with the consent of such person, make the necessary correction himself.

Duty of the officer on receiving the application.

The provisions respecting application for execution follow nearly the existing practice of the Company's Courts, except that the party applying for an attachment of moveable property in execution of a decree will now be allowed the choice of two kinds of attachment; one applicable to specific property as detailed in an inventory, and the other applicable generally to all the moveable property belonging to the defendant, wherever it may be found.

According to the present practice of the Company's Courts, no property can be attached except such as is specially mentioned in the Court's order. In the Supreme Court the order for execution is put into the hands of the sheriff; and he is directed to levy generally of the defendant's goods what may be sufficient to meet the sum mentioned in the writ; and he is in the practice of taking on his own responsibility any goods that may be pointed out to him by the plaintiff as belonging to the defendant. If he attaches property that belongs to any other person, he exposes himself to an action of damages by the party whose property he has wrongfully taken. After making the attachment he is frequently served with a notice of claim; and then he calls on the plaintiff for an indemnity; upon receiving which, if it is satisfactory, he persists with the attachment, and sells the defendant's right or title in the property, whatever it may be. He may, however, release the property if he think proper, at the risk of an action of damages by the plaintiff, if it should prove to be the property of the defendant; but against the consequences of this action he may protect himself by taking an indemnity from the claimant.

There is no officer in the Company's Courts who can be intrusted with so large a discretion as is given to the sheriff of Calcutta; and it is the Court itself that makes the attachment, by means of an order in which the property to be attached is distinctly specified. Courts of justice cannot be put so rapidly in motion as their officers; and in applying the practice of the Company's Courts to Calcutta there would be some danger that property, of which a plaintiff had unexpectedly got information, would be removed before an order could be got for its attachment. The order for a general attachment is suggested to meet this difficulty; but it is not proposed that it should be issued without such precautions as will render the plaintiff liable for any injury that may be occasioned by the attachment of property belonging to any other person than the defendant.

In the Company's Courts at present no warrant for execution can be issued without a special order of the Court. This seems to be unnecessary as a general rule; and it is proposed that the officer should be allowed to issue the warrant as a matter of course, except in certain cases in which some necessary preliminaries must be observed.

Measures required in certain Cases preliminary to the Issue of the Warrant.

CLX.

If an interval of more than one year shall have elapsed between the date of the decree and the application for its execution, or if the enforcement of the decree be solicited by or against individuals being heirs or representatives

In certain special cases, the defendant may be called on to show cause.

of the original parties in the suit, or against one only of several individuals equally affected by the decree, or if it shall appear that the matter in dispute has been adjusted by the parties subsequently to the decree, either by the voluntary surrender of the thing or property adjudged, or by the payment of the sum decreed, either in whole or in part, or by giving security for the same, or entering into an instalment bond or otherwise, or where the decree is for the delivery of a specific moveable, or for the specific performance of a contract or any other particular act, and the application is for the enforcement thereof by imprisonment of the party adjudged to deliver or perform the same, the clerk or other proper officer of the Court shall, instead of proceeding to the immediate enforcement of the decree, submit the application for execution thereof to the Judge; and it shall be competent to the Judge, if he shall think proper, to issue a notice to the party against whom execution may be sued for, requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him. If upon such notice the party shall not attend in person or by attorney or vakeel, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall attend in person or by attorney or vakeel, and shall offer any objection to the enforcement of the decree, the Court shall issue such order as in the circumstances of the case may appear to be just and proper.

CLXI.

Application for a general attachment of moveable property must be referred to the judge.

Where the application is for a general attachment of the moveable estate of the defendant, the clerk or other proper officer of the Court shall submit the application to the judge, and it shall be competent to the judge, if he shall think proper, (and if the plaintiff shall in person, or by his agent, give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person or persons than the defendant,) to direct that an order do issue for the attachment of the defendant's moveable property wherever the same may be found, to the amount of the judgment and costs, or such other sum as may be specified in such order.

CLXII.

The judge may summon and examine the defendant as to his means of payment.

Before granting the order for a general attachment, or upon the application of the plaintiff at any time after judgment and before complete execution of the decree, the judge may summon the defendant, and examine him as to his property and his means of satisfying the judgment, in the same way as if he were not a party to the suit.

CLXIII.

If the judgment be by default and for land, a proclamation for claimants to be issued before execution.

If the decree be for a zemindary, talook, land, house, or other real estate or property, or any share therein, and the judgment shall have been passed against the defendant or defendants by default, the clerk or other proper officer of the Court, before proceeding to execute the decree, shall issue a proclamation calling upon all persons having any claim to the property in question to appear on a certain day, to be specified in the proclamation, and which shall not be later than fifteen days from the date of the application for the execution of the decree, either in person or by an attorney or vakeel, and be prepared to state their claims to the Court, and support them by sufficient evidence.

CLXIV.

How the proclamation is to be published.

The proclamation shall be read aloud by the bailiff or other proper officer in some public place within the limits of or adjacent to the zemindary, talook, land, house, or other real estate, or property, for which, or a share in which, the judgment by default may have been given, and a copy thereof shall be fixed up in some conspicuous part of the Court House; and if the judgment by default shall have been given by any Court subordinate to the Zillah

Judge, a copy of the proclamation shall also be fixed up in the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the judgment may have been given.

CLXV.

If no claimant to the property shall appear on the day fixed in the proclamation, either in person or by attorney or vakeel, to offer any objection to the execution of the decree, the Court shall order the decree to be executed in the same manner as if the judgment had not been given by default.

If no claimant appear, execution to issue.

CLXVI.

If on the day fixed in the proclamation, any claimant to the property shall appear, in person or by attorney or vakeel, and shall offer any objection to the enforcement of the decree, the Court shall proceed forthwith to investigate the same, in the like manner and with the like powers as if the claimant had been originally made a defendant to the suit, but shall restrict its inquiry to the fact of possession only; and if it shall appear to the satisfaction of the Court, that the zemindary, talook, land, house, or other estate or property mentioned in the decree was not in the possession of the party against whom the judgment by default may have been given, nor in the occupancy of ryots, or cultivators, or other persons, paying rent to him at the date of the commencement of the suit, the Judge shall pass an order to stay execution of the decree, and shall call upon the party applying for execution thereof to show cause why the judgment should not be set aside and cancelled. And if the party shall fail to show such cause to the satisfaction of the Court, the Court shall forthwith cancel the said judgment, and an entry of the cancellation shall be made in the Register of the suit. If it shall appear to the satisfaction of the Court that the zemindary, talook, land, house, or other estate or property mentioned in the decree, was in the possession of the party against whom the judgment by default was given, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the date of the commencement of the suit, it shall direct the decree to be executed in the same way as if the judgment had not been by default. The decision of the Court in the investigation mentioned in this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Investigation of claims, how to be made.

In some instances it is thought necessary to make exception from the general rule, that warrants for execution may be issued by the officer of the Court without reference to the judge. The first provision for this purpose is taken from the existing practice of the Company's Courts, with an extension of the practice to the enforcement of decrees for specific performance. The second has reference to the general attachments of moveable property already alluded to, and is followed by a provision for the examination of the defendant generally as to his means of satisfying the decree. This may be a most valuable auxiliary to the execution of decrees for money; and for its application in this general way we are indebted to the Code of Procedure prepared by Mr. Mills and Mr. Harington; though examination of the defendant, in relation to the execution of decrees for land and for money had been previously introduced into other parts of our scheme. The last provision contains certain precautions which appear to us to be requisite before decrees for land on judgments by default are carried into execution, in order to prevent such judgments from being fraudulently made the means of ejecting from the possession of land persons who have not been made parties to the suit.

Issue of the Warrant.

CLXVII.

When the clerk or other proper officer of the Court is satisfied as to the particulars above referred to, and all necessary preliminary measures have been taken when any such are required, he shall forthwith prepare and issue, under the seal of the Court, the proper warrants for the execution of the decree.

Warrant to be under seal of Court.

CLXVIII.

Every warrant for execution of decree shall bear date on the day on which the same shall be issued, and shall be sealed with the seal of the

Latest day of execution to be written in war-

rant, and time and manner of execution to be indorsed.

Court, and delivered to the bailiff or other proper officer. A day shall be specified at the bottom of the warrant on or before which it must be executed, and the bailiff or other proper officer shall in all cases indorse upon the order the day and the manner in which it was executed, and shall return it with such indorsement to the Court from which it issued.

The provision as to the issue of the warrant is conformable to the present practice of the Company's Courts, except that in ordinary cases the officer will now be allowed to issue the warrant without a special order of the Court.

Of the Execution of Decrees for Immoveable Property.

CLXIX.

How immoveable property is to be delivered when not in the occupancy of ryots.

If the decree be for a house or other immoveable property not in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by putting the party to whom the house or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

CLXX.

How it is to be delivered when in the occupancy of ryots.

If the decree be for land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, at some convenient place or places, the substance of the decree in regard to the property.

CLXXI.

Obstruction to execution of decree for land.

If the decree shall be for the possession of a zemindary, talook, land, house, or other real estate or property, or share therein, and the party or parties in whose favour the same shall have been adjudged shall be resisted or obstructed by any person or persons in obtaining effectual possession thereof, and shall make an application to the Court, either in person or by attorney or vakeel, at any time within one month from the date of the officer's return to the warrant for execution of the decree, the Court shall fix a day for investigating into the matter of his complaint, and if reasonable ground shall be shown to the satisfaction of the Court for believing that the obstruction or resistance in question has been occasioned by the defendant or defendants, or by some other person or persons at his or their instigation, the Court shall issue a summons to the defendant or defendants calling upon him or them to appear, on the day appointed for the investigation, to attend and give evidence.

Defendant may be summoned if suspected of implication.

CLXXII.

Court how to proceed if he cannot be found or fails to attend.

In all cases in which a summons shall be issued for the attendance of a party at any time or for any purpose after judgment, the summons shall be served in the manner herein-before prescribed for the service of a summons upon a witness, and if he cannot be served in either of the ways specified in Article CXIX., or if after being served he shall, without lawful excuse, fail to comply with such summons, or attending, or being present in Court, shall, without lawful excuse, refuse to give evidence, he shall be liable to be dealt with in the same way as if he were not a party to the suit, and as any other person would be dealt with in the like circumstances, under Articles CXXIII., CXXXI., and CXXXII. respectively.

CLXXIII.

How defendant may be dealt with if he persists in obstructing the plaintiff.

If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was caused or occasioned by the defendant or defendants, or by any other person or persons at his or their instigation, and that the complainant is still

resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or defendants, or some person or persons at his or their instigation, the Court may, without prejudice to the operation of the provisions of Article CCIX., commit the defendant or defendants to close custody until further orders.

CLXXIV.

If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person or persons claiming *bonâ fide* to be in possession of the estate or property on his own account, or on account of some other person or persons than the defendant or defendants to the suit, the Court shall, without prejudice to the operation of the provisions of Article CCIX., proceed to investigate the claim in the same manner and with the like powers as if the claimant had been made originally a defendant to the suit, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case; and the order of the Court shall not be subject to appeal, but the party against whom the same may be pronounced shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order. Obstruction by a *bonâ fide* claimant.

The two first provisions relating to the execution of decrees for immoveable property make a distinction between immoveable property which is not in the occupancy of ryots or other persons entitled to occupy the same, and immoveable property which is in such occupancy. By much the greater part of the land in the country is in the latter predicament, the ryots or cultivators having, by the customs of the country, a legal right of occupancy so long as they pay their rents according to established rates. In making delivery of both kinds of land, the existing practice of the Company's Courts has been followed.

Under a decree for land which is in the occupancy of ryots, the holder of the decree is entitled, *primâ facie*, to receive direct from the ryots all that they are legally bound to pay. But when he comes into closer connexion with them, by sending his servants among them to warn them that they are in future to pay their rents to him, he is frequently met by claims on the part of persons alleging that they hold *pottahs*, or other writings entitling them to receive the rents, subject to certain small payments, sometimes little more than nominal, to the proprietor. If these claims are sustained, the plaintiff would frequently get very little by his decree; while if they are *bonâ fide* the holders of the pottahs cannot be summarily ejected under the decree. An investigation of the claims for the purpose of ascertaining these points seems to be required, in justice to the plaintiff, whom the Court is bound to put in the enjoyment of the rights decreed to him, if application is made within a reasonable time. Mr. Mills and Mr. Harington think that, "with reference " to the complicated nature of the tenures prevailing in different parts of the country, " nothing more can be done for the decree holder beyond 'the due notification of the " ' transfer of the right,'" and that "the decree holder must be left to make good his rights " against undertenants and other parties setting up adverse claims as best he may by " separate litigation, in like manner as if no decree had passed." Upon this point we cannot entirely agree with them. The claimants are in collusion with the defendant so often that this may almost be assumed to be the case if nothing has been heard of the claims during the progress of the suit. The whole may be but a new device of the defendant for renewing the contest with the plaintiff after being beaten in the regular suit. We therefore propose that, if an application is made to the Court within one month from the date of the officer's return, indorsed on the warrant for execution, the Court should enter on the investigation of the claims, and may begin with summoning and examining the defendant when ground is shown to its satisfaction for suspecting him of collusion with the claimants. The investigation is to be conducted in the same way as if the claimants were parties to the suit; and they also may be personally examined. It may be hoped that, by the joint operation of these powers to examine both defendant and claimants, collusive claims, which at present form the greatest obstruction to the execution of decrees, will become more rare than they are at present.

If the claim is made *bonâ fide*, the decree will not be executed against the claimant.

The order which may be passed after this investigation will not be liable to appeal: but the party against whom it is passed, that is, the plaintiff or the claimant, may bring a suit to establish his right. In cases of this kind, under the present practice of the Company's Courts, both remedies are open to the defeated party; but we consider that one of the remedies ought to be sufficient; and we have given the preference to the remedy by suit, as the one to which a person who is conscious he has no right is least likely to have recourse.

Of the Execution of Decrees for Money by Attachment of Property.

CLXXV.

If the decree be for money, and the person or persons applying for execution thereof shall desire that the amount shall be levied from the estate and property of the person or persons against whom the same may have been What property may be attached in execution of decree.

pronounced, the Court shall cause the attachment of any lands, houses, goods, chattels, effects, money, bank notes, cheques, bills of exchange, promissory notes, hoondees, Government securities, bonds, or other securities for money, debts, shares in the capital or joint stock of any railway, banking, or other public company or corporation, or other property whatsoever, moveable or immoveable, belonging to the defendant or defendants, and whether the same be held in his or their own name or names, or by another person or other persons in trust for him or them, or on his or their behalf, to the amount or value of the sum decreed and costs, or to such extent as may be deemed necessary for the purpose of securing the satisfaction and payment of such amount and costs.

CLXXVI.

The attachment is to be made by seizure when the property is goods and chattels;

By seizure or by prohibitory order when it is real estate;

By prohibitory order only when it is debts.

By notice when it is money in deposit in a Court of Justice or Government office.

Where the property shall consist of goods, chattels, effects, or other moveable estate, the attachment shall be made by actual seizure, and the bailiff or other officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof. Where the property shall consist of lands, houses, or other immoveable estate, the attachment may also be made by actual seizure, but it shall be in the option of the Court, if it shall think proper, instead of directing its officer to make seizure and assume possession of the property, to issue a written order prohibiting the sale, mortgage, gift, or other transfer thereof, and all persons from receiving or taking the same by purchase, gift, or otherwise howsoever, and also prohibiting all ryots or cultivators and other tenants and occupiers of the land from paying their rents to any person or persons whomsoever, until the further order of the Court; with permission in the meantime to pay their rents into Court, to the treasurer or other proper officer who may be authorized to receive or grant receipts for the same. Where the property shall consist in whole or in part of debts, or of shares in any railway, banking, or other public company or corporation, the attachment shall be made in all cases by a written order of the Court, prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person or persons whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving payment of any dividends thereof until such further order. Where the property shall consist in whole or in part of money standing in the name of the defendant or to his account, and in deposit in any Court of Justice or office of Government, or of interest on Government paper, the attachment shall be made by a notice to such Court or office requesting that the money or interest may be held, subject to the further orders of the Court by which the notice may be issued.

CLXXVII.

When the attachment is by prohibitory order, how the order is to be made known.

In the case of lands, houses, or other immoveable property, the written order shall be read aloud at some place on or adjacent to the same lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court House; and if the lands, houses, or other immoveable property are situated beyond the limits of the town of Calcutta, a copy of the written order shall also be fixed up in the cutchery of the collector of the zillah in which the lands, houses, or other immoveable property may be situated. In the case of debts, the written order shall also be fixed up in some conspicuous part of the Court House, and copies of the written order shall be sent by post to each individual debtor. And in the case of shares in the capital or joint stock of any railway, banking, or other public company or corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court House, and a copy of the order shall be sent to the manager, secretary, or other proper officer of the company.

CLXXVIII.

All private alienations of property under attachment to be null and void.

After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property or shares attached, whether by sale, gift, or otherwise,

and any payment of the debt or debts or dividends to the defendant or defendants, during the continuance of the attachment, shall be null and void.

CLXXIX.

The Court may direct money or bank notes to be paid to the plaintiff, or other attached property to be made over to him at a reasonable price, or sold by public auction.

In all cases of attachment under the preceding articles, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank notes, or a sufficient part thereof, shall be paid over and delivered to the party or parties applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank notes, so far as may be necessary for the satisfaction of the decree, shall be transferred and delivered to the party or parties applying for execution of the decree, if he or they shall be disposed to accept the same in satisfaction or part satisfaction of the amount decreed and costs, at the market value or such price as the Court may deem fair and reasonable; or that any part of the property so attached shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party or parties.

CLXXX.

Where the property consists of debts or real estate a manager may be appointed.

Where the property attached shall consist of debts due and owing to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable estate or property, it shall further be competent to the Court to appoint a manager of the said estate or property, with power to sue for and compound for the debts, and to collect the rents or other receipts and profits, or to raise money by mortgage or conditional sale of the land or other immoveable property, and to make and execute such deeds or instruments in writing as may be necessary or requisite for the purpose, and to pay and apply the same rents, profits, or receipts, or money so to be raised, towards the payment and satisfaction of the amount of the decree and costs; and in any case in which a manager shall be appointed, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

CLXXXI.

Attachment to be released after full satisfaction of the decree.

When full satisfaction shall be made of the amount decreed and costs, with all charges and expenses which may be incurred by the said attachment, or the same shall be otherwise paid and satisfied by the defendant or defendants, the attachment shall be forthwith released; and if the defendant or defendants shall desire that due intimation shall be given of such release, the order for the release of the attachment shall, at his or their expense, be proclaimed and intimated in the same manner as herein-before prescribed for the proclamation of the attachment.

The first provision relating to the execution of decrees for money by attachment of property specifies the different kinds of property which may be attached in execution of a decree, but also declares that all other property whatsoever, moveable or immoveable, belonging to the defendant, may be so attached, whether the same be held in his name, or by others in trust for him. As the law stood when this provision was prepared, trust property could not be taken in execution of a judgment of the Supreme Court. But this defect has been remedied by an Act of the Legislature of India, passed in the present year. There can hardly be said to be any fixed practice on this subject in the Company's Courts. But we have reason to think that some judges of the Company's Courts might hesitate to put a decree in execution against property which had been formally vested by regular deeds in trustees for the benefit of the defendant. The provision will remove all doubt on the subject.

The next provision describes the modes in which attachment is to be made, which vary according to the different natures of the property. In some cases it may be made by a mere order of the Court prohibiting any alienation of the property; and the succeeding provision prescribes how the order is to be published, and is followed by another which declares that alienations made in despite of the order shall be void.

The attached property having become subject to the orders of the Court, the next two provisions are directed to the manner in which it is to be disposed of: one of these extends for the first time to India the process by means of which the Court may transfer the attached

property, or a part of it sufficient to meet the decree, to the plaintiff at a reasonable price; and the other provides, in the case of debts or landed estate, for the appointment of a manager to sue for the debts and collect the rents, with powers also to raise money by mortgage. These powers are also new in India. It has hitherto been the practice in the Supreme Court to sell debts by public auction to the highest bidders; and they have frequently been purchased by the debtors, or other parties on their behalf, at little more than nominal prices, to the great injury of both plaintiff and defendant. In the Company's Courts debts are seldom attached in execution of decree; but, if attached, they could not be dealt with in any other way than sale. The above-mentioned Act of the Indian Legislature contains a provision similar to the one recommended by us, enabling the sheriff of Calcutta to sue in his own name for the amount of debts seized under writs of execution. By that Act it is provided that no debt shall in any case be sold by the sheriff, but that the same shall be realized in the mode aforesaid. We had left a discretion to the Courts in the matter; and we still think that the Courts should have this discretion, as cases may occur where it will be more for the benefit of the plaintiff and defendant that the debts should be sold than that an expensive management should be kept up for their recovery by means of legal proceedings.

Of Claims to attached Property.

CLXXXII.

How claims and objections to sale of attached property are to be investigated.

In the event of any claim being preferred to or objection offered against the sale of lands or any other real or personal property which may have been attached in execution of a decree, or under and by virtue of any order for sequestration which may be passed before judgment, as not belonging to the defendant or defendants, and consequently not liable to be sold in execution of a decree against him or them, the Court shall, subject to the proviso contained in the next succeeding article, proceed to investigate the same in the same manner and with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant or defendants as are contained in Articles CLXXI. and CLXXII. And if it shall appear to the satisfaction of the Court that the land or other real or personal property so advertised to be sold in execution of the decree was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, or that being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person or persons, the Judge shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other real or personal property advertised to be sold in execution of the decree was in possession of the party against whom execution is sought, as and for his own property, and not for or on account of any other person or persons, or was in the possession of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, the Court shall pass an order disallowing the claim and shall direct the decree to be executed. The order which may be passed by the Court under this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right, at any time within one year from the date of the order.

CLXXXIII.

Claims and objections should be preferred at the earliest opportunity.

The claim or objection shall in all cases be preferred or made at the earliest opportunity to the Court that shall have ordered the attachment; and if the property to which the claim or objection applies shall have been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding article; provided that if it shall appear that the preferring or making of the claim or objection has been designedly and unnecessarily delayed, with a view to obstruct the ends of justice, the sale shall not be postponed, and the claimant shall be left to prosecute his claim after the sale by a regular suit.

In the Supreme Court there is no investigation of claims to attached property. The attached property is sold subject to them, and seldom fetches anything approaching to its real value. In the Company's Courts the claims are investigated; and the property, when ultimately sold, after all claims have been disallowed, usually brings something much nearer its actual value than property sold in execution of a decree of the Supreme Court. For that reason we have given the preference to the practice of the Company's Courts, so far as to provide that, when claims are made to attached property, they shall be inquired into. The order pronounced by judges of the Company's Courts is subject to appeal; and, further, the ultimate order may be called in question in a fresh suit. We consider that in this case, as in other cases of investigation, one of the remedies is sufficient; and we have given the preference to a fresh suit for the reason already assigned. In the Code of Procedure prepared by Mr. Mills and Mr. Harington, a distinction is made between claims to moveable and claims to immoveable property: the former are to be investigated; and, though the investigation is to be conducted in a summary manner and without written pleadings, it is to be considered as being of the same nature as a regular suit. From the order, whatever it may be, an appeal will lie to the proper tribunal; that will close the case. Those gentlemen thus give a preference to the appeal in the summary proceeding over a fresh suit. But this is easily accounted for by the dilatory character of regular suits, which, under the procedure contemplated by Mr. Mills and Mr. Harington, may be protracted for a considerable time. With regard to claims to immoveable property, they give the preference to the practice of the Supreme Court over that of the Company's Courts. On this point we cannot at all agree with them. We understand that it is by no means uncommon for property of very great value to be sold at sheriffs' sales for a mere trifle; and it appears to us that the practice of the Supreme Court in respect to the sale of attached property is highly injurious to both plaintiff and defendant.

Of Sales in Execution of Decrees.

CLXXXIV.

Sales to be by public auction; exception as to Government paper.

Sales in execution of decrees shall be conducted by the proper officer of the Court, and shall in all cases be made by public auction in manner herein-after mentioned, except where the property to be sold shall consist of Government securities; and with respect to such securities, it shall be competent to the Court to authorize its officer, or any other person whom it may think proper to appoint, to sell and dispose of the same through a broker at the market rate of the day, and, if the endorsement of the party in whose name any such security is standing shall be required to transfer the same, to endorse such security thus "A.B. by C.D. by order of" (as the case may be), and in the meantime, until such sale, to receive any interest which may become due thereon, and to sign receipts for the same; and any endorsement which shall be made as aforesaid shall be as effectual to pass the said securities, and to give a good title to the holder thereof, and any receipt which shall be signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or signed by the party himself or his constituted attorney.

CLXXXV.

How other property taken in execution must be sold.

In all cases of intended sale, whether of moveable or immoveable property, in execution of any decree or other judicial process, where the property shall not consist of Government securities, and in all sales of Government securities, when the Court shall direct that the same be sold by public auction, a proclamation of the intended sale, with particulars of the time and place of sale, of the property to be sold, including the jummah of the estate when the property to be sold is an estate paying revenue to Government, or any portion of any such estate, and of the amount for the recovery of which the sale is ordered, shall be made in the current language of the country, and at Calcutta it shall also be made in the English language, at least thirty days before the appointed day of sale, exclusive of the day of sale, and of the date on which the proclamation may be ordered. Such proclamation shall be made, in Calcutta, in the mode that has been usual in the case of sales by the sheriff, and at other places in the usual mode, by beat of drum, on the spot where the property is attached; and a written notification to the same effect shall be affixed in some conspicuous place in the Court of the judge who shall have ordered the sale, and also in the Court of the Zillah judge, where the judge who ordered the sale is subordinate to the Zillah judge. When the attachment shall have taken place at some place beyond the limits of the ordinary original jurisdiction of the High Court, the written notification shall also be affixed in some

conspicuous place within the town or village in which the attachment may take place, and the cutcherry of the collector, and also in the Court of the local moonsiff.

CLXXXVI.

Nothing but the right title and interest of the defendant guaranteed to the purchaser.

In all cases of a public sale of property in execution of a decree, it shall be clearly explained to the bidders at the sale, that nothing is guaranteed to them in the land or other property sold beyond the rights and interests therein of the individuals answerable for the amount of the decree or other process in execution of which the sale is made.

CLXXXVII.

The process for attachment and sale may in certain cases be issued simultaneously.

The usual process for attachment and sale in such cases, when the property to be attached consists of goods, chattels, or other personal estate other than debts, may either be issued successively or simultaneously, as the Judge directing the sale may in each instance think proper; but no sale shall in any instance take place without a previous proclamation for the period specified in Article CLXXXV.; and any material irregularity in the sale which may be established on investigation to the satisfaction of the Court by whom the sale may have been ordered, shall be sufficient to invalidate the sale, provided that an application objecting to the sale on the ground of such irregularity be made to the Court by the party objecting thereto, either in person, or by Attorney or Vakeel, within one month after the sale.

CLXXXVIII.

The sale, if not objected to for irregularity, or if the objection is disallowed, shall become absolute.

If no such application as is mentioned in the last preceding Article be made within one month after the sale, or if such application shall be made and the objection shall be disallowed, the judge shall pass an order confirming the sale; and in like manner, if such application shall be made, and if the objection be allowed, the judge shall pass an order setting aside the sale for irregularity. The order which may be passed in either case unless appealed from, and if appealed from then the order passed on the appeal, shall be final, and the party against whom the same has been given shall be precluded from bringing a fresh suit for establishing his claim.

CLXXXIX.

Certificate to be granted to the purchasers of land.

After the sale shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest, to all intents and purposes whatsoever, any law or practice to the contrary thereof not withstanding.

CXC.

And delivery made of property sold as far as practicable.

Where the property sold shall consist of goods, chattels, or other personal estate of which seizure has been made, the same shall also be delivered to the purchaser or purchasers thereof; and where it shall consist of lands, houses, or other immoveable property, the right, title, and interest of the defendant therein shall, as far as practicable, be delivered to the purchaser or purchasers thereof by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaiming by beat of drum, at some convenient place or places, to the occupants thereof, that the right, title, and interest of the defendant or defendants therein has been transferred to the purchaser or purchasers.

CXCI.

If the sale be set aside price to be returned to purchaser.

Whenever a public sale is set aside as invalid under Article CLXXXVII., or on any account whatever, the purchaser shall be entitled to receive back his purchase money on restoring any property delivered over to him, with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

The provisions in respect of sales in execution of decrees follow in general the present practice of the Company's Courts. The second, with regard to the sale of Government paper, is taken from the recent Act of the Indian Legislature referred to in the two last preceding notes.

Of the Execution of Decrees by Imprisonment.

CXCII.

When a defendant under a decree is committed to prison in execution thereof, the judge shall fix whatever monthly allowance he shall think sufficient for his subsistence, not exceeding per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper officer of the Court, or of the gaol where the defendant may be in custody, by monthly payments in advance, on or before the 1st day of each month; the first payment to be made on the day of imprisonment for such portion of the current month as may remain unexpired. Subsistence-money of a defendant in gaol how fixed and furnished.

The blank in this article is left to be filled up by the local government.

CXCIII.

A defendant will be released at any time on the decree being fully satisfied, or at the request of the person or persons at whose instance he may have been imprisoned, or on such persons omitting to pay the allowance as above directed, for the space of twenty-four hours after it has become due; and further, his imprisonment on account of the decree which occasioned it shall not, in any case, exceed two years. Imprisonment for debt limited to two years.

CXCIV.

Sums disbursed by a plaintiff for the subsistence of a defendant in gaol shall be added to the decree, and shall be recoverable from his property under the ordinary rules; but the defendant shall not be detained in custody or arrested on account of such disbursements. Subsistence money to be added to amount of decree.

CXCV.

Any person in confinement under a decree who is not entitled to the benefit of any Act for the relief of insolvent or bankrupt debtors in India, may at any time procure his enlargement by making an application to the judge to that effect, and furnishing in writing a full and fair account of all his property of whatever nature, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him, and of the places respectively where such property is to be found, and moreover assigning the whole of such property to such person as the Court may direct, or such part thereof as may be sufficient for the satisfaction of the decree. In such case the judge shall cause the plaintiff to be furnished with a copy of the account of the defendant's property, and call on him within a reasonable period, to be fixed by the judge, to make proof of any fraudulent concealment or misrepresentation made by the defendant; and on his failing to make such proof within the period specified shall cause the defendant to be set at liberty. Application may be made for release from confinement on a surrender of the whole of the debtor's property.

CXCVI.

But if the plaintiff shall within the time specified, or at any subsequent period, prove to the satisfaction of the Judge that the defendant, for the purpose of procuring his enlargement without satisfying the decree, wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith, the Judge shall, at the instance of the plaintiff, either retain the defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if he shall think proper, send the defendant to the magistrate to be dealt with according to the provisions of clause 193 of the Penal Code. If guilty of fraud or concealment, debtor's imprisonment may be extended to two years; and he may be further dealt with criminally on account of his fraud

CXCVII.

Though the Defendant be released, his property is liable for the decree.

A defendant once enlarged shall not again be imprisoned on account of the same decree except under the operation of the last preceding Article, but his property will continue liable, under the ordinary rules, to attachment and sale in satisfaction of the decree until the same shall be fully made.

CXCVIII.

Attaching creditor to be first paid out of property attached.

Whenever property is attached in execution of a decree, on the application of any person or persons, such person or persons shall be entitled to be first paid out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree.

The provisions relating to the execution of decrees by imprisonment follow pretty closely the existing practice in Bengal, modified by that of Bombay in one important particular. At present, in the former Presidency, imprisonment for debt may be perpetual, except that an insolvent debtor on honestly giving up all his property may be released by order of the Court. Any fraudulent concealment, however, consigns him to perpetual imprisonment, unless he pays the debt, or is released by the act of the creditor, or by the creditor neglecting to make the necessary deposit of money for the maintenance of the debtor; for otherwise even the Court has no power afterwards to release him. By the Bombay practice, imprisonment for debt is limited to two years, unless there has been a fraudulent concealment of property, when the imprisonment may be extended to another year. We have adopted the Bombay limit of two years for all cases, leaving the fraudulent concealment, whenever it occurs, to be dealt with under the Penal Code, and allowing the benefit of a *cessio bonorum* even within that time, if made honestly. This is the nearest approximation that could be made to the practice of the Supreme Court, where the relief to insolvent debtors is administered under the provisions of a special Act of the Legislature, which itmight be inconvenient to extend at present to the other parts of the country. That may perhaps be found practicable at some future time. In the meantime, the limitation of the term of imprisonment in all cases to two years, with the further relief of the *cessio bonorum* in the case of insolvency, will be a very great mitigation of the present condition of insolvent debtors in the Company's Courts.

Of the Enforcement of a Decree out of the Jurisdiction of the Court by which it was passed.

CXCIX.

The decrees of any Courts may be executed beyond their own jurisdiction by other Courts.

A decree which cannot be enforced or executed within the jurisdiction of the Court by which it was passed may be enforced or executed within the jurisdiction of another Court, in the manner following:

CC.

How application is to be made for such execution.

The party may apply to the Court which shall have passed such decree for a copy thereof, and also for a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, also for a copy of any order for execution of such decree that may have been passed. The Court, unless there be any sufficient reason to the contrary, shall cause such copy and certificate to be furnished; and the same shall be signed by the judge or one of the judges of the Court, and sealed with the seal of the Court.

CCI.

Judge certifying decree, how to describe himself.

If such Court shall be the principal Civil Court of original jurisdiction in the district, the judge shall describe himself accordingly in the certificate, and shall also name the Court and the district.

CCII.

Certificate to pass from Chief Court of the district to Chief Court where it is to be executed.

If the Court shall not be the principal Civil Court of original jurisdiction in the district, the copy of the judgment, and of the order for execution, if any, and the certificate of the judge shall without delay be transmitted to the principal Civil Court of original jurisdiction in the district; and the judge or one of the judges of such Court shall issue a certificate under

his hand an the seal of the Court, verifying the signature of the judge of the Court in which the decree shall have been given to the documents above mentioned; and in such certificate the judge signing the same shall describe himself as the judge or one of the judges of the principal Civil Court of the district, and shall also name the Court and the district.

CCIII.

All copies and certificates, which may be furnished by or transmitted to the principal Civil Court of original jurisdiction in the district in which such decree shall have been given, shall be transmitted by such Court without delay to the principal Civil Court of original jurisdiction in the district in which the party may wish to have the decree enforced or executed; and such Court shall cause the said documents to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any judge, unless the Court to which such documents shall be transmitted shall, under any peculiar circumstances, to be specified in an order, require the same. Court applied to for execution, how to proceed.

CCIV.

The copy of any decree, or of any order for execution, when filed in the Court to which it shall be transmitted, for the purpose of being executed or enforced as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may be enforced or executed by such Court, or any Court subordinate thereto, to which it may intrust the enforcement or execution thereof. Decree or order transmitted, to be executed as that of the Court.

CCV.

When application shall be made to any of the said Courts to enforce or execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to enforce or execute the same, according to its own rules in the like cases; and the last-mentioned Court shall take cognizance of and punish all wrongful acts or irregularities done or committed in enforcing or executing such decree; and all persons disobeying or obstructing the enforcement or execution of any such decree shall be punishable by such last-mentioned Court in the same manner as if the said decree had been pronounced by such Court. Execution how to be enforced by Court applied to.

CCVI.

An appeal shall lie from any order of a Court for enforcing or executing the decree of another Court, in the same manner, and subject to the same rules, as if the decree had been originally passed by the Court making such order. What appeal from orders for execution under this Act.

The provisions for the enforcement of a decree out of the jurisdiction of the Court by which it was passed follow very closely the provisions of Act No. XXXIII. of 1852 of the Indian Legislature.

CHAPTER IV.

Of Contempts and Disobedience of Orders.

CCVII.

Any Judge or Court of Justice shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their Courts, and to punish the persons committing them, as therein authorized. Disobedience of Orders, &c. under Clause 149 of the Penal Code, how punishable.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior or insulting him, or neglecting his duty.

CCVIII.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, Contempt of Court under Clause 197.

it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause.

The offence is that of insulting or interrupting a Court of Justice.

CCIX.

Contempt of lawful Authority under Chapter IX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto.

Chapter IX. of the Penal Code is entitled "Contempts of the lawful Authority of Public Servants."

CCX.

Ordinary powers of punishment not to be exceeded.

Punishment may be remitted on submission of the Offender.

Provided that Principal Sudder Ameens and Moonsiffs shall not exceed the powers of punishment conferred on them respectively as Judges of subordinate Criminal Courts, in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that when a person has been sentenced to punishment under the provisions of the last preceding article for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge or Court of Justice to remit the punishment, on the submission of the offender to the order or requisition of such Judge or Court of Justice.

The Articles under the head of Contempts are a repetition, *mutatis mutandis*, of the Articles contained under Chapter VIII. of the Code of Penal Procedure, and are here inserted for the guidance of the Civil Judge.

CHAPTER V.

Reference to Arbitration.

CCXI.

Reference on application of the parties.

If the parties to a suit are desirous that the matters in difference between them shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the Court at any time before final judgment for an order of reference.

CCXII.

Application how to be made.

The application shall be made by the parties in person, or through one of the attorneys or vakeels of the Court, specially authorized in that behalf by an instrument in writing, which shall be presented to the Judge at the time of making the application, and shall be filed with the proceedings in the cause.

CCXIII.

Appointment of arbitrators may be made by Court at the desire of parties.

If the parties cannot agree with respect to the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, or having accepted it shall refuse to act, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint some proper person or persons to be the arbitrator or arbitrators, as the case may be.

CCXIV.

Order of reference.

The Court shall fix such time as it may think reasonable for the delivery of the award, and shall by an order under its seal, in which the time so fixed shall be specified, refer to the arbitrator or arbitrators the matters in difference in the suit between the parties.

CCXV.

When the reference is to two or

If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of

an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint their own umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree as to any of these particulars, as the Court itself may determine. more, the order shall provide for difference of opinion.

CCXVI.

Power to Court to direct arbitration.

If on the day mentioned in the summons or at any subsequent hearing of the cause it shall appear to the Judge that the matter in dispute between the parties consists wholly or in part of matters of mere account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of court, or to some other proper person whom the Judge may think fit to appoint, upon such terms as to costs and the remuneration of the arbitrator, or otherwise, as the Judge shall think reasonable.

CCXVII.

Court may determine particular facts or points of law.

If it shall appear to the Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law or fact fit to be decided by the Court, it shall be lawful for the Judge to decide such question of law or fact, and his decision thereupon shall be taken and acted upon by the arbitrator as conclusive.

CCXVIII.

If action be commenced by one party to a deed of arbitration, Court may stay proceedings.

Whenever the parties to any deed or instrument in writing shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person claiming through or under him or them, shall nevertheless commence any suit against the other party or parties, or against any person or persons claiming through or under him or them, in respect of the matters so agreed to be referred or any of them, it shall be lawful to the Court in which the suit is brought, on application by the defendant or defendants at his or their first appearance before the Judge, in obedience to any summons that may be issued in such suit, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the commencement of such suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make an order for staying all proceedings in such suit, on such terms as to costs or otherwise as to such Court may seem fit: provided always, that any such order may at any time thereafter be discharged or varied as justice may require.

CCXIX.

Powers of arbitrators.

Upon any reference by an order of Court, whether compulsory or by consent, the arbitrator or arbitrators and umpire shall have all the like powers as the Court would have in the like circumstances; and the Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators, or umpire, or the parties, may desire to have examined, as the Court is authorized to issue in causes tried before it; and persons not attending in consequence of such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators, or umpire, during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the arbitrator or arbitrators, or umpire, as they would incur for the same offences in suits tried before the Court; provided, that the arbitrator or arbitrators, or umpire, shall report the order, with the reason for making it, to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order.

CCXX.

Extension of time for making award.

In cases where the arbitrators or umpire shall not have been able to complete the award within the period specified in the order from want of the necessary evidence or information, or other good and sufficient cause, the Court

may from time to time enlarge the period for the delivery of the award if it shall think proper. In any case in which an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

CCXXI.

In case of death, incapacity, or refusal to act of arbitrators or umpire, Court may appoint others in stead.

If, in any case of reference to arbitration by an order of Court, the appointed arbitrator or arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court, on the application of the parties, or any of them, to appoint a new arbitrator or arbitrators, or umpire, in the place or stead of the person or persons so dying, or refusing or becoming incapable to act; and where two arbitrators are at liberty by the terms of the order of reference to appoint an umpire and do not appoint an umpire, then and in every such instance any of the parties may serve the arbitrators with a written notice to appoint an umpire: and if within seven clear days after such notice shall have been served no umpire be appointed, it shall be lawful for the Court upon the application of the party having served such notice as aforesaid, upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this article, the arbitrator or arbitrators, or umpire so appointed, shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

CCXXII.

Award how to be submitted to Court.

When a final award in a cause shall be made, either by the arbitrators or umpire, it shall be submitted to the Court under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the cause.

CCXXIII.

Arbitrator may state special case.

It shall be lawful for the arbitrator or arbitrators and umpire, upon any reference, by an order of Court, whether compulsory or by consent of parties, if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

CCXXIV.

Power to send back to arbitrator.

In any case where reference shall be made to arbitration as aforesaid, the Court shall have power at any time and from time to time to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the same arbitrator or arbitrators or umpire, upon such terms as to costs and otherwise as to the said Court may seem proper.

CCXXV.

Judgment to be pronounced in terms of the award.

If the Court shall not see cause to remit the matters referred for reconsideration in manner aforesaid, it shall pronounce judgment conformably to the award, unless the same shall be set aside, or to its own opinion on the special case if the award shall have been submitted to it in the form of a special case, and the decree shall be carried into execution in the same manner as other decrees of the Court.

CCXXVI.

Applications to set aside the award.

All applications to set aside any award made on a compulsory reference, or a reference by consent of the parties, shall be made within ten days after the same has been submitted to the Court; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, judgment shall be pronounced as mentioned in the last preceding article, and such judgment shall be final between the parties.

The provisions for reference to arbitration embody the existing practice of the Company's Courts (which has been thought better adapted to the people of India than the practice of the Supreme Court), with the addition of some provisions in regard to compulsory references to arbitration in certain cases, which have been adapted from the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125.

CHAPTER VI.

Of Proceedings on Agreement of Parties.

How Questions may be raised for the Decision of a Civil Court by any Persons interested.

CCXXVII.

Parties interested or claiming to be interested in the decision of any question or questions of fact, or law or equity, may enter into an agreement which shall not be subject to any stamp duty, that upon the finding of a Judge, in the affirmative or negative of such question or questions of fact, or of law or equity, a sum of money fixed by the parties, or to be determined by the Judge, shall be paid by one of the parties; or that some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts specified in the agreement. Where the agreement is for the delivery of some property, moveable or immoveable, or for the doing or performing, or the refraining to do or perform any particular act or acts, the estimated value of the property to be delivered, or to which the act or acts specified may have reference, shall be stated in the agreement.

Questions of fact, or of law or equity may be raised by Agreement for the decision of any Court having Jurisdiction.

CCXXVIII.

The agreement may be filed in any Court having jurisdiction in the matter, with the proper officer, and when so filed shall be numbered and registered as a cause between some or one of the parties interested, or claiming to be interested, as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; but it shall not be necessary to issue any process for summoning the defendant.

The Agreement to be filed and numbered as a Cause.

CCXXIX.

After the agreement shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and shall be bound by the statements therein.

Parties to be subject to the Court's jurisdiction.

CCXXX.

The case shall be set down for hearing as an ordinary suit; and if the Judge shall be satisfied, after an examination of the parties, their attorneys or vakeels, or taking such evidence as he may deem proper, that the agreement was duly executed by the parties, and that they have a *bonâ fide* interest in the question or questions of fact or of law or equity stated therein, and that the same is or are fit to be tried or decided, he shall proceed to record and try, or hear the same, and deliver his finding or opinion thereon, in the same way as in an ordinary suit; and shall, upon his finding or deciding upon the question or questions of fact or of law or equity, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

Hearing and disposal of the case.

Of Special Cases for the Opinion of the High Court.

CCXXXI.

Special case may be stated by any persons interested.

Persons interested or claiming to be interested in any question as to the construction of any Act of Parliament, or any Regulation of the Bengal Code, or Act of the Council of India, will, deed, or other instrument in writing, or any article, clause, matter, or thing therein contained, or as to the title or evidence of title to any real or personal estate contracted to be sold or otherwise dealt with, or as to the parties to or the form of any deed or instrument for carrying any such contract into effect, or as to any other matter or thing, may, with the consent of a Judge of the High Court, concur in stating the same in the form of a special case for the opinion of the Court; and all executors, administrators, and trustees may concur in such case.

CCXXXII.

What it is to contain.

Every such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby, and shall be signed by the parties or their advocates, attorneys, or vakeels.

CCXXXIII.

To be filed and numbered as a cause.

The special case shall be filed with the proper officer of the Court, and shall be numbered and registered as a cause between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; but it shall not be necessary to issue any process for summoning the defendants or defendant.

CCXXXIV.

Parties thereto to be subject to Court's jurisdiction.

After the special case shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and such of the parties as are legally competent to bind themselves, shall, for the purposes of such special case, be bound by the statements therein; and the parties who are not legally competent to bind themselves shall also be bound by the statements therein, if the Court shall think proper so to direct, after taking such precautions as may be deemed necessary for protecting the rights of such parties.

CCXXXV.

Hearing and disposal of the case.

The special case shall be set down for hearing as an ordinary suit, and the Court, after hearing the parties, their advocates, or vakeels, shall proceed to determine the questions raised therein, or any of them, and to declare its opinion thereon, and, so far as the case shall admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration; and every such declaration of the Court shall have the same force and effect as such declaration would have had, and shall be as binding to the same extent as such declaration would have been, if contained in a judgment pronounced in a contested suit. Provided, that, if upon the hearing of such special case as aforesaid, the Court shall be of opinion that the questions raised thereby, or any of them, cannot properly be decided upon such case, the Court may refuse to decide the same.

CHAPTER VII.

Of Appeals.

Appeals from Final Decrees.

CCXXXVI.

In what cases Appeals shall lie from decisions of Judges, Principal Sudder Ameens, and Moonsiffs.

An appeal shall lie, as herein-after provided, from the decisions of the Judge, the Principal Sudder Ameen, and of the Moonsiff, in all suits in which the property, or possession, or right of occupancy of land or other real property, or the right to receive rent or profit issuing out of land or other real property, or the right

to hold land or other real property exempt from the payment of rent or revenue, or anything in the nature thereof, or the right to hold land or other real property subject to the payment of a fixed annual sum on account of rent or revenue, or anything in the nature thereof, or the right to any benefits, liberties, or privileges derived out of or affecting any landed or other real property, or the right to receive or collect any customary or other payments or gratuities on any account whatsoever, or the title to any office, or to any trust, or special privileges, or to any toll, fair, market, or franchise, or anything in the nature thereof respectively, shall be in question; and in all suits in which the right of inheritance from, or succession to, any person, or the validity of any marriage, divorce, will, or authority to adopt, or of any decree, bequest, or limitation under any will or settlement, or the condition or *status* of any person, in respect of relationship, religion, caste, or otherwise, or the custody or guardianship of any person, may be disputed; and in all suits for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or for breach of promise of marriage; and in all suits in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

CCXXXVII.

An appeal shall also lie from all other decisions of the Judge, the Principal Sudder Ameen, and Moonsiff, except in suits in which the amount claimed does not exceed the sum of fifty rupees.

When it shall not lie.

CCXXXVIII.

In suits in which the amount claimed, or the value of the property claimed, does not exceed the sum of one thousand rupees, the appeal from the decision of the Principal Sudder Ameen, or Moonsiff, as the case may be, shall be to the Zillah Judge; in suits above that sum, to the High Court at Calcutta. And in suits in which there is no specification of the estimated value of any property or of any sum of money by way of damages, the appeal from the decision of the Principal Sudder Ameen shall be to the High Court.

When the appeal from the Principal Sudder Ameen and Moonsiff shall be to the Zillah Judge, and when to the High Court.

CCXXXIX.

The decision of the Judge in appeals from the decision of the Principal Sudder Ameen, or Moonsiff, shall be final; provided, however, that it shall be competent to the Judge, at the time of deciding an appeal from the judgment of a Principal Sudder Ameen or Moonsiff, to record his opinion, certifying in his judgment his reasons for the same, that the case is one for revision by the High Court, and when he shall have so certified, the High Court shall admit a special appeal from the decision of the Zillah Judge, in the event of either of the parties making application to that effect.

The decision of the Zillah Judge in appeal is final.

CCXL.

The appeal from the decisions of the Judge, in original suits, shall be to the High Court at Calcutta.

In original suits the appeal from the Zillah Judge shall be to the High Court.

CCXLI.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more Judges of the High Court to one of the Appellate Courts constituted by Judges of the High Court.

An appeal lies from Judges of the High Court exercising original jurisdiction to the High Court in its appellate capacity.

CCXLII.

In all cases of appeal from decisions of the Courts of original jurisdiction mentioned in the last preceding article, the Appellate Court shall consist of a greater number of Judges than the Court which passed the decision appealed from. And in all cases whatsoever if there should be a difference of opinion among the Judges of the Appellate Court the decision shall be according to the opinion of the majority; and if the opinions of the Judges are equally divided, the decision of the Lower Court shall be affirmed.

How the Appellate Court is to be constituted.

Decision in all cases of appeal.

Some of the articles under this head belong more properly to the jurisdiction of Courts, but they are so closely connected with procedure that they have been introduced here for the sake of convenience.

The first article enumerates the kinds of suit in which an appeal shall lie from the judge of first instance to a higher tribunal, whatever be the amount or value of the thing or matter at issue; and it will be found to comprehend almost every case of any difficulty that is likely to arise in any of the Courts of justice, leaving very few out of the category of appealable suits, except those for simple debt.

The second article provides that an appeal shall also lie in all other suits than those enumerated in the first, except in suits where the amount claimed does not exceed fifty rupees; so that simple cases under that amount are not appealable to any tribunal. This is a considerable innovation on the present practice of the Company's Courts in Bengal, where an appeal is allowed in all cases. But the practice is different at Madras, where there is no appeal from the decisions of Village Moonsiffs, whose jurisdiction is limited to suits for money or personal property to the amount or value of ten rupees, nor any appeal from the decisions of the District Moonsiffs in suits for money or personal property, where the amount or value does not exceed twenty rupees. In 1851 the Village Moonsiffs disposed of 11,226 cases, of which 3,512 were decided on trial: and of non-appealable cases by the District Moonsiffs there were 9,014 decided on trial in the course of that year. In the same year 47,500 cases were decided by the Moonsiffs in the Bengal provinces, from which no appeal was preferred. With reference to these facts,—to the improvement in the system of judicial procedure which brings the parties simultaneously before the Court for the purpose of personal interrogation; to the expense and other evils of protracted litigation; to the public favour a Court of final jurisdiction at Calcutta has met with, it is believed that a final jurisdiction to some extent may be confided to the Moonsiffs generally, and that with reference to the jurisdiction proposed to be conferred on them, fifty rupees, in the most simple kind of cases, is not too high a sum.

The distinctions of tribunals to which appeals shall lie, according as the case is under or above a certain amount, will afford the superior tribunals the means of judging of the competency and conduct of all the Courts subordinate to them.

In providing for the abolition of the special appeals, except under the certificate of the Zillah Judge, we are proposing a material departure from the existing practice of the Company's Courts. At present there is a special appeal to the Sudder Dewanny Adawlut from all decisions passed on regular appeals in any of the Civil Courts subordinate to it, on any of the following grounds, viz.: 1st, Where the decision has failed to determine all material points in difference, or has determined them contrary to law or usage, having the force of law; 2d, Misconstruction of any document; 3d, Ambiguity in the decision affecting the merits; 4th, Substantial error or defect in procedure apparent on the record, and likely to have produced error or defect in the decision upon the merits of the case.

In the decision of questions of Mohamedan and Hindoo law, the Courts have now a large body of precedents for their guidance; and in the event of any complex or difficult case, have it in their power to admit the unsuccessful party to a special appeal. It is not often in cases of this kind that special appeals are applied for. An examination of the cases decided by the Sudder Dewanny Adawlut leads to the conclusion that prior to the enactment of the last Act upon the subject of special appeals, a great number of applications for the admission of such appeals were complied with on the ground of some defect in procedure, in many instances not of a material nature. The mode of trying civil suits which we recommend for adoption is so simple, that we believe but little room will be left, with ordinary care, for the interference of the High Court in the correction of defects in procedure "likely to have produced error or defect in the decision upon the merits of the case;" and we have provided that no decision shall be interfered with on account of any error, defect, or irregularity not affecting the merits.

The procedure which we propose will, we believe, obviate, to a great extent, the necessity for a law of special appeal such as now exists; and as we have provided that the decision in all cases above 1,000 rupees shall be directly appealable to the High Court, we think it better to do away with the special appeal altogether, than to continue a system which admits of protracted litigation, attended with heavy expense, for the few cases below that sum which may be wrongly decided by the Zillah Judge.

How Appeals are to be preferred.

CCXLIII.

Appeal to be preferred by a memorandum to be filed within specified time.

The appeal shall be made in the form of a memorandum as herein-after prescribed, which may be presented in the Appellate Court, or in the Court in which the decision objected to was passed for transmission to the Appellate Court. In either case, the memorandum must be presented within the times herein-after specified, unless the appellant shall, by a petition to the Appellate Court, show sufficient cause for not having presented it within such limited periods; that is to say, within thirty-one days if the appeal be to the Zillah Judge, or be to the High Court from a decision of a Court of original jurisdiction constituted by one or more of its own Judges, and within ninety-one days if the appeal be to the High Court from the decision of a Zillah Judge, Principal Sudder Ameen, or Moonsiff; the days to be reckoned

in all the cases as immediately following and exclusive of the day on which judgment was pronounced.

CCXLIV.

An application for an extension of the time for presenting a memorandum of appeal may be made directly to the Appellate Court, or through the intervention of the Lower Court, at the option of the applicant. If the application for extension of time be made to the Lower Court, that Court shall record the reasons assigned for the application, and shall transmit a copy of its proceedings to the Appellate Court.

Time may be extended by an application.

CCXLV.

Every memorandum of appeal shall set forth concisely, and under distinct heads, grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. But the appellant shall not be tied down to the objections set forth by him in his memorandum of appeal.

What the memorandum is to contain.

The memorandum of appeal shall be in the following form, or to the following effect—

Form of memorandum.

Memorandum of Appeal.

(*Name, &c. as in Register.*)	Plaintiff.
(*Name, &c. as in Register.*)	Defendant.

[*Name of Appellant*] Plaintiff [*or* Defendant] above named appeals to the High Court at Calcutta [*or* Zillah Court at *as the case may be*], against the decree of the Moonsiff, or Principal Sudder Ameen of [*or as the case may be*], in the above cause, dated the day of ; for the following among other reasons.

CCXLVI.

If the memorandum of appeal be presented in the Court in which the decree objected to was passed, such last-mentioned Court shall forthwith forward the same to the Appellate Court, with an endorsement thereon of the date on which it was presented.

Memorandum to be forwarded to the Appellate Court.

CCXLVII.

Within one month from the date on which the memorandum of appeal shall be presented in the Lower Court, or one month from the date on which intimation shall be received by the Lower Court from the Appellate Court that the memorandum of appeal has been presented in the Appellate Court, unless the Appellate Court shall think proper to enlarge the time, and then within such enlarged time, the Judge of the Lower Court shall, except as provided in the next succeeding Article, certify under his hand and the seal of his Court the record duly made up and authenticated, including authenticated copies of all his own material proceedings in the cause, and the original depositions, exhibits, and every original paper read in the cause, together with the written statements, if any, that may have been presented by the parties, or any of them, and received and recorded by the Judge, and shall transmit the record so made up to the Appellate Court. Previous to transmitting the above-mentioned papers to the Appellate Court the Judge of the Lower Court shall cause true and faithful copies of all the originals to be made out and authenticated by the proper officer of his Court, and deposited in the Court in lieu of the originals. The copies shall be records of the Court, and shall be received in evidence in any other Court in the same way as originals. In cases where any original deposition or other original proceedings or matter whatsoever shall have been previously entered in a book, which may likewise contain other proceedings in other distinct cases, or any other matter, so that such original papers cannot be transmitted to the Appellate Court without the other proceedings or matters, the Judge of the Lower Court, within the time and in the manner before directed, shall certify a true and authentic copy of such original papers, and that the original of each copy so transmitted is entered in

What proceedings to be forwarded to the Appellate Court, and when.

such book. In cases where any original paper shall have been mislaid or lost, and a copy of it shall have been entered in any book or proceedings of the Court, the copy shall have the force and effect of the original, and the Judge shall transmit a copy of it to the Appellate Court, and shall in like manner certify that the original, after due search, cannot be found. A memorandum of all expenses which may be incurred in the preparation of copies of papers or otherwise, in or about the making up and transmitting the record, shall be forwarded therewith to the Appellate Court, and shall be considered costs in the cause.

CCXLVIII.

In certain appeals to the High Court the proper officer to attend in the Appellate Court with the original record of the case.

In appeals to the High Court from the Courts of original jurisdiction constituted by one or more of its own Judges, and in appeals from the Principal Sudder Ameen and Moonsiff to the Zillah Judge, the proper officer shall attend in the Appellate Court, from time to time as may be required, with the original record of the proceedings in the cause.

The abolition of written pleadings in original suits requires a corresponding alteration in the procedure in regard to appeals. Instead of a petition with reasons of appeal, we propose a simple memorandum after a prescribed form. In appeals to the Zillah Judge the memorandum must be presented within thirty-one days, which is in conformity with the present practice; but where the appeal is to the High Court we propose to allow ninety-one days instead of six weeks as allowed at present. A further period of six weeks is allowed at present for filing reasons of appeal. There is no room for this in our procedure, and we add the two periods together.

In the rules for forwarding the record of the suit to the Appellate Court, the present practice has been generally adhered to. Principal Sudder Ameens and Moonsiffs do not keep their own records, being required to forward them at the close of every month to the Zillah Judge, by whom they are kept with his own records in one office. This will explain some difference of practice in regard to the transmission of records when the appeal is to the Zillah Judge, and when it is to the High Court.

Of staying and executing Decrees under Appeal.

CCXLIX.

When and on what terms execution of decree may be stayed.

When any party or parties appealing is or are directed to pay any sum of money, or to perform any duty, or when the decree is for the possession of land or any other property, real or personal, the Court whose judgment is appealed from shall and is hereby empowered to award that its judgment shall be carried into execution, or that sufficient security shall be given for the performance of such judgment; provided always, that where the Court of Original Jurisdiction shall think fit to order the judgment to be executed, security shall be taken from the other party or parties for the due performance of such order or judgment as may be passed in the Court of Appeal. But this decision shall itself be subject to appeal.

The rule under this head is adopted from the practice of the Supreme Court in regard to appeals from that Court to the Privy Council, but does not differ substantially from that of the Company's Courts.

Of Procedure in Appeals from final Decrees.

CCL.

How the appeal is to be entered.

When a memorandum of appeal shall have been presented in or transmitted to an Appellate Court, the clerk (or proper officer) of the Appellate Court shall endorse thereon the date of presentment if it was presented in the Appellate Court, or the date of receipt if it was transmitted from the Lower Court, and shall register the appeal in a book to be kept for the purpose, and called the Register of Appeals.

CCLI.

Form of the register.

The Register shall be kept in the form contained in the schedule (B.) hereunto annexed; and a certified copy of the Register, under the seal of the Court, shall be received in evidence in all Courts of Justice in India.

CCLII.

It shall not be necessary in any Court of Appeal to take any security for costs, but it shall be in the discretion of every such Court of Appeal to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to answer.

Court of Appeal may, at its discretion, require security for costs from appellant.

CCLIII.

A day shall be fixed by the Appellate Court for the hearing and disposal of the appeal; which day shall not be earlier, in cases in which a record of the suit shall be transmitted by the Lower Court, than forty-two days from the day on which the record may have been received in the Appellate Court, and shall not be earlier, in cases appealable to the High Court, when the officer is required to attend the Appellate Court with the original record of the suit, than twenty-one days from the presentment of the memorandum of appeal, but shall otherwise be as early, in all cases, as can be conveniently fixed, with a due regard to the state of business in the Court; the days to be reckoned in all the cases as exclusive of the day of hearing, and of the day on which the record may have been received, or the memorandum of appeal presented, in the Appellate Court. Notice of the day which has been fixed for the hearing of the appeal shall be sent by the proper officer of the Appellate Court to the proper officer of the Lower Court from the decree of which the appeal has been preferred, and shall be served on the appellant and respondent, in the same way as herein-before provided for in respect to the service of a summons. The notice to the appellant shall contain an additional intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, either in person or by an attorney or vakeel of the Appellate Court, his appeal will be dismissed for want of prosecution. And the notice to the respondent shall contain an intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided *ex parte* in his absence.

Day to be fixed for hearing the appeal.

CCLIV.

On the day in that behalf mentioned in the notices, and unless the Court shall otherwise direct, from day to day, until the cause is called on, the parties, appellant and respondent, shall be in attendance in the Appellate Court, in person or by an attorney or vakeel of the Court, duly empowered in manner herein-before mentioned, to represent them in all matters relating to the prosecution or defence of the appeal.

The parties to be in attendance on day so fixed.

CCLV.

If on the day fixed for the hearing of the appeal, or on any other day subsequent thereto on which the cause may be called on, the appellant shall not appear in person, or by an attorney or vakeel of the Court, the appeal shall be dismissed for default. If the appellant appears in person, or by attorney or vakeel, and the respondent shall not appear in person, or by attorney or vakeel, the appeal shall be heard *ex parte* in his absence.

Consequences of non-appearance.

CCLVI.

Where an appeal is dismissed for default, an intimation of the dismissal shall be sent to the Court of original jurisdiction, and the costs of preparing copies of papers, and making up and transmitting the record, may be realized from the appellant, under an order of that Court, to be enforced in the same manner as a decree of Court.

When an appeal is dismissed, intimation to be sent to the Lower Court.

CCLVII.

In all cases in which an appeal shall be dismissed for default of prosecution, it shall be competent to the appellant to apply within reasonable time to the Appellate Court, for the re-admission of his appeal. The application shall be accompanied with a certificate from the Court of original jurisdiction, that the costs mentioned in the preceding article, when ordered to be realized from the appellant, have been fully paid and satisfied; and if the Appellate Court

How an appeal dismissed for default may be restored.

shall think proper to grant such application, a day shall be thereupon fixed for the hearing of the appeal, and a fresh notice shall be issued to the respondent, to be served in the same way as the first notice, and with the like additional intimation as is herein-before provided; but it shall not be necessary to issue or serve any notice on the appellant.

CCLVIII.

The Appellate Court, how to give judgment.

The Appellate Court, after hearing the cause, shall proceed to give its judgment in the same manner as herein-before prescribed in regard to the judgment of Courts of original jurisdiction, for confirming, or reversing, or modifying and altering the decree of the Lower Court, as the Appellate Court shall think proper.

CCLIX.

No decision to be reversed for irregularity.

No decision shall be reversed or altered, nor shall any case be referred back to the Court of original jurisdiction, on account of any error, defect, or irregularity not affecting the merits of the case.

CCLX.

When a case may be remanded by Appellate Court.

If the Court of original jurisdiction shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Court of Appeal essential to the rights of the parties, and the decree of the Lower Court shall be reversed by the decree in appeal, the Appellate Court may, if it think right, remit the case to the Lower Court, and cause the papers in the suit, together with a copy of the decree in appeal, to be transmitted to such Lower Court, with directions to proceed in the investigation of the merits of the case, and pass a decree therein.

CCLXI.

Power to remand limited as above.

It shall not be competent to the Appellate Court to remand a case for a second decision by the Court of original jurisdiction, except as provided in the preceding clause.

CCLXII.

When the Appellate Court may dispose of a case though the Lower Court has decided on other grounds.

When there is sufficient evidence upon the record of the Lower Court to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate Court shall finally determine the case, notwithstanding that the judgment of the Lower Court has proceeded wholly upon some other ground.

CCLXIII.

When the Appellate Court may call for fresh evidence.

It shall not be competent to the parties in an appeal to produce additional evidence, whether of exhibits or witnesses; but if it appears that the Lower Court refused to admit competent evidence, or if the Appellate Court itself requires the production of exhibits or witnesses, as necessary to enable it to pronounce a satisfactory judgment, or if any other substantial cause demands a deviation from the ordinary rule, the Court may allow additional exhibits to be received, and the same and other witnesses to be examined; provided that whenever this power is exercised, the reasons for exercising it be recorded on the proceedings by the Appellate Court.

CCLXIV.

How additional evidence is to be taken.

Whenever additional evidence is permitted to be received, it shall be competent to the Court of Appeal to take such evidence before itself, or to require the Lower, or any other Court, or to empower any person, to take such evidence; and it shall also be competent to the Court of Appeal to prescribe the mode by which such evidence shall be taken; and the Court of Appeal shall be at liberty to proceed by all or any of the modes aforesaid.

CCLXV.

Points to be defined.

In all cases where additional evidence is permitted to be taken, the Court shall define the point or points to which the evidence is to be confined, and record the same in the minutes of the proceedings.

CCLXVI.

The Appellate Court shall have all the like powers in regard to the granting of time, adjourning the hearing of the cause, examining the parties or their attornies or vakeels, and awarding costs, or otherwise, as are herein-before contained in regard to Courts of original jurisdiction.

Powers of Appellate Court.

CCLXVII.

The judgment of the Appellate Court shall in all cases be pronounced in open Court, and, after being written out, shall be signed by the judge or judges. The judgment shall be written out in the English language; and where that language is not the language in ordinary proceedings before the Court, the judgment shall be translated into the languages so being in such ordinary use, and the translation shall be signed by the judge.

How the judgment of the Appellate Court is to be delivered.

In what language it is to be written.

CCLXVIII.

The decree of the Appellate Court shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and description of the parties appellant and respondent, the memorandum of appeal, a list of any additional exhibits that the Appellate Court may have allowed to be produced, and the names of any witnesses that it may have allowed to be examined. It shall also contain an exact copy of the ordering part of the judgment, or a translation thereof in the language in ordinary use in proceedings before the Court. The decree shall be sealed with the seal of the Court, and signed by the judge or judges who passed it, and copies shall be furnished to the parties in the same manner as herein-before provided for in regard to the decrees of Courts of original jurisdiction.

What the decree is to contain.

CCLXIX.

A copy of the decree, certified by the clerk or proper officer of the Appellate Court, and sealed with the seal of the Court, shall be transmitted to the clerk or proper officer of the Court of original jurisdiction which passed the first decree in the suit appealed from, and shall by him be filed with the original proceedings in the cause; and an entry of the judgment of the Appellate Court shall be made in the original register of the suit.

A certified copy of the decree to be transmitted to the Lower Court.

CCLXX.

Application for execution of the decree of an Appellate Court shall be made to the Court of original jurisdiction which passed the first decree or order appealed from, and shall be enforced and executed by the Court which passed the first decree or order appealed from, in the manner and according to the rules herein-before contained for the enforcement and execution of original decrees or orders made by such last-mentioned Court.

How to be executed.

The rules of procedure in the Appellate Court follow the practice of the Sudder Dewanny Adawlut, as near as may be consistently with the new procedure in Courts of the first instance. At present there is what may be called a technical appearance of the parties in the Appellate Court, as well as in the Court of first instance; and the parties, after such appearance, are supposed and required to be in attendance at any time that their cause may be called on. This is inconsistent with our system, which is so framed as to enable the parties to conduct their own business at the expense of as little personal inconvenience as possible. It is necessary, therefore, that they should have due warning when the Court is able to proceed with the hearing of the cause. To afford them reasonable time for preparation and instructing their professional agents, if they choose to employ any, it is provided, that no cause shall be called on till the expiration of a certain fixed period after the appeal has been filed in the Appellate Court.

If a party neglects to appear on the day fixed for the hearing of the cause, the consequence is judgment by default in the case of the appellant, and proceeding *ex parte* in the case of the respondent, which is as near an approach to the practice in original suits as the different nature of an appeal admits of.

With regard to the kind of judgment which may be given in appeal, we have adopted a rule from a recent Act of the Council of India, which we hope will be attended with much benefit. Under the previous system of the Company's Courts we fear that judgments were not seldom reversed on merely technical grounds: this we think a great evil: it is to prefer the means to the end. The rule in question will remedy this evil by providing that no judgment shall be reversed or altered, nor any case referred back to the Court of original jurisdiction on account of any error, defect, or irregularity not affecting the merits of the case.

There is another evil of the present practice which we have also attempted to remedy. There is reason to fear, from the great number of cases that are commonly remitted to the Lower Courts, that there may be some abuse or an excessive exercise of the power to remit, and we think it proper to restrict the power of remitting to the single case where the Court below has disposed of the suit upon a preliminary point to the exclusion of some material evidence. In all other cases we think it better that the Appellate Court, being in possession of a suit, should proceed to dispose of it, and to take farther evidence if that be deemed necessary.

To save time and expense in the execution of decrees in cases that have been decided on appeal, we provide that a certified copy of the Appellate Court's decree shall be sent to the Lower Court to be filed with the original proceedings.

Appeals from Orders.

CCLXXI.

From what orders appeals shall lie.

Appeals shall lie from the orders of Civil Courts as follows:—

1st. In all cases whatsoever where the order is for the punishment of a contempt committed in the presence of the Court, except when the Court which has passed the order is one of the Courts of original jurisdiction constituted by a Judge or Judges of the High Court.

2d. In all other cases whatsoever, unless otherwise specially provided for, if the decree in the suit be appealable.

3d. In all other cases, unless otherwise specially provided for, whether the decree in the suit be appealable or not, provided that the person against whom the order has been passed is not a party to the suit.

It will be observed that when the decree in the suit is not appealable, there will be no appeal from an order passed against a party to the suit, unless the order be for the punishment of a contempt committed in the presence of the Court.

CCLXXII.

Court to which the appeal should be made.

The appeal from an order shall always be made to the Court to which the decree in the suit in which the order may be passed is appealable. If the order be passed in a suit in which the decree is not appealable, or in a judicial proceeding which cannot properly be titled as of any suit, the appeal from the order of a Moonsiff, or Principal Sudder Ameen, shall be made to the Zillah Judge, and the appeal from the order of a Zillah Judge shall be made to the High Court.

CCLXXIII.

The appeal not to stay proceedings.

The appeal shall not in any case stop the proceedings in the Lower Court.

According to the present practice of the Company's Courts, an appeal lies from all orders that may be pronounced by the lower Courts during the currency of a suit. And this practice has been adhered to, with some exceptions, in the rules under this head in all suits where the ultimate decree is appealable. In suits where the decree is not appealable, it would be inconsistent to allow an appeal to any of the parties in the suit. But this objection does not apply to persons who are not parties to the suit, and an appeal is allowed to such persons in all cases in which they may be affected by an order. It has also been thought proper to allow an appeal from any order inflicting a penalty on account of a contempt committed in face of the Court, even though the person affected by the order should not be a party to the suit. On this point we thought it proper to take evidence, and the two witnesses who were examined concurring in opinion that the judges of the lower Courts could not be safely entrusted with irresponsible authority in this respect, we have adhered to the present practice of the Company's Courts, without extending it to the judges of the High Court.

Of Procedure in Appeals from Orders.

CCLXXIV.

Procedure, how it differs from the procedure in appeals from decrees.

The procedure in appeals from orders shall be in all respects the same as in appeals from final decrees, except as herein-after provided.

1. The register shall be kept in the form contained in the Schedule (C.) hereunto annexed.

2. The memorandum of appeal shall in all cases be presented in the Court in which the order objected to was passed, within five days immediately following, and exclusive of the day on which the order was pronounced.

3. Where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, the memorandum of appeal shall be accompanied with a list of the papers or depositions of which the appellant desires that copies should be transmitted to the Appellate Court.

4. The memorandum of appeal shall be transmitted to the Appellate Court within eight days from the date of presentment; and where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, authenticated copies of the order appealed against, and of the papers and depositions mentioned in the list accompanying the memorandum, shall be transmitted to the Appellate Court with the memorandum of appeal.

5. At the expiration of twenty days after the presentment of a memorandum of appeal in a case appealable to the Zillah Court, and thirty days after its presentment in a case appealable to the High Court, from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, and ten days in a case appealable to the High Court from an order of a Court of original jurisdiction constituted by one or more of its own judges, the case shall be set down for hearing in the Appellate Court, and if the Appellant does not appear on any day thereafter that the case may be called on for hearing, it shall be struck out of the file; but the Appellate Court shall have power to restore the case to the file, if sufficient cause to its satisfaction for so doing be shown within a reasonable time.

6. It shall not be necessary for the Appellate Court to call for any further papers, unless it shall think proper.

7. It shall not be necessary to give any notice to the respondent.

8. The judgment may be delivered orally, and reduced to writing in the language of the Court, by an officer of the Court, or otherwise as the Court may think proper in each particular case.

In cases arising out of the execution of decrees we have in general provided no other remedy than the institution of a regular suit. The number of appeals from orders will thus be greatly reduced, and the orders appealed from will be mostly interlocutory. With so summary a procedure as we propose, the appeal from an interlocutory order would be nugatory, unless preferred within a very short time. The time allowed at present is the same as in cases of regular appeal. We have reduced the time for appeals from orders to five days. As we think it desirable that the Judge of the Lower Court should be apprized that an appeal has been preferred from his order, so that he may suspend his proceedings if he think proper, we have provided that the memorandum of appeal shall be presented to the Lower Court. To accelerate and facilitate the proceedings in appeal as much as possible, we provide that the memorandum of appeal shall be accompanied with a list of the papers which the appellant desires may be sent to the Appellate Court, and that copies of these shall be transmitted forthwith. In other respects, the procedure which we propose does not differ materially from the present practice of the Company's Courts.

CHAPTER VIII.

Review of Judgment.

CCLXXV.

Any persons considering themselves aggrieved by a decree of any Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a Zillah Judge in appeal, from which no special appeal shall have been admitted by the High Court—or by a decree of the High Court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council,—and who, from the discovery of new matter or evidence which was not within their knowledge, or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against them—may apply in person or by attorney or vakeel, for a review of

Cases in which a party may apply for a review of judgment.

Within what time the application should be made.

judgment by the Court which passed the decree. The application shall be made within three months from the date of the decree, but the Courts are nevertheless authorized to admit applications for a review after the period above mentioned, provided that the parties preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period. If the Court to which an application for a review may be presented shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if on the contrary it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court to which the application may have been presented shall grant the review, and its order in either case, whether for rejecting the application or granting the review, shall be final.

The order of the Court for granting or refusing the review is final.

CCLXXVI.

Application for a review in the High Court must be made to the judge or judges that passed the decree.

Provided that if the Court to which the application for a review of its judgment has been presented be the High Court, whenever the judge or judges who may have passed the decree, or if the decree have been passed by two or more judges, when any of such judges, shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering his order or opinion upon the same, it shall not be competent to any other judge or judges of the same Court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

CCLXXVII.

Whenever a review is granted the parties are to be summoned.

In all cases in which an application for a review of judgment may be granted by any Court, the Court shall give such order, in regard to the summoning of the absent party or parties and hearing of the cause, as it may deem proper in the circumstances of the case.

CCLXXVIII.

Abstract statements of reviews admitted to be forwarded to Superior Courts.

The Principal Sudder Ameens and Moonsiffs shall at the close of each month send to the Judge of the Zillah a list of the cases in which they may have admitted a review of judgment, with a statement of the grounds on which the review has been admitted, and the Judge shall in like manner, at the close of each month, send to the High Court a list of the cases in which he may have admitted a review of judgment, together with the grounds on which the review has been admitted, and shall at the same time transmit to the High Court any lists which he may have received from the Principal Sudder Ameens and Moonsiffs of cases in which they may have admitted a review of judgment, together with such remarks as he may think proper thereon.

According to the present practice of the Company's Courts, the Judges of the Lower Courts are not allowed to review their own judgments without the permission of their superiors, which is very seldom refused. Without seeing the whole case it must frequently be impossible for the Superior Court to determine whether the permission should be granted or withheld. For this reason we think that the admission, as well as the refusal of the review, should be left entirely with the Judge of the Lower Court. But to prevent abuse, we propose that monthly lists should be forwarded to the Superior Court of cases in which reviews have been granted, with a statement of the grounds for the admission.

Criminal Courts of Original Jurisdiction.

I.

The Courts for the trial of offences, other than the High Court, shall be the following:— Criminal Courts other than the High Court.

COURTS OF SESSION;

COURTS OF THE MAGISTRATES;

SUBORDINATE COURTS; viz.:—

Subordinate Criminal Courts of the 1st Class.

Subordinate Criminal Courts of the 2d Class.

II.

The Magistrates of Calcutta shall exercise in Calcutta the same powers as the Magistrates in the Mofussil exercise in the Mofussil. Magistrates of Calcutta and in the Mofussil to have like powers.

First Assistants to the Magistrate, and Principal Sudder Ameens, shall be Judges of Subordinate Criminal Courts of the 1st Class. Who are to be judges of the subordinate Criminal Courts.

Second Assistants to the Magistrate, and Moonsiffs, shall be Judges of Subordinate Criminal Courts of the 2d Class.

III.

The Session Courts, the Courts of the Magistrates, and Subordinate Criminal Courts shall be denominated after the zillah, or city, or division in which they are respectively established. Criminal Courts, how to be denominated.

IV.

The appointment, suspension, and removal of the Judges of the Session Courts, of the Magistrates, and of the Judges of the several Subordinate Criminal Courts, shall be regulated by such rules and orders as the Governor General in Council shall, from time to time, pass. Appointment, suspension, and removal of Criminal Judges.

V.

Each Criminal Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:— Declaration on entering upon office.

> "I, *A.B.*, appointed of the Court of do
> " solemnly declare that I will faithfully perform the duties of my office
> " to the best of my ability, knowledge, and judgment."

VI.

Each Criminal Court is to use a seal such as shall be prescribed by the Government. Seal.

VII.

It shall rest with the Governor General in Council, upon the report of the High Court, made after such communication with the Session Judges and Magistrates and Judges of the Subordinate Criminal Courts as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to those several Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars Ministerial officers.

as the said Governor General in Council may deem proper. Upon the receipt of the instructions of the Governor General in Council the Judges of the Criminal Courts shall make the appointments to the several offices of their respective establishments.

VIII.

No person excepted from jurisdiction by reason of place of birth or of descent.

No person whatever shall by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.

IX.

High Court and Session Court to have jurisdiction over all offences.

The High Court and Session Court shall have jurisdiction in respect of all offences punishable under the Penal Code.

X.

Exclusive jurisdiction as to certain offences.

The High Court and Session Court exclusively shall have jurisdiction in respect of—

1st. Offences entered in Schedule A. of the Code of Procedure as triable by those Courts only.

2d. The offences punishable under Clauses 364, 365, 366, and 390 of the Penal Code, when the value of the property which is the subject of the offence exceeds 500 rupees.

3d. Offences however punishable under any clause of the Penal Code, charged against public servants of the first four classes described in Clause 14, whether as such public servants or otherwise.

4th. Offences however punishable under any clause of the Penal Code, except Clause 149, charged against the following public servants, as such public servants:

Every head ministerial officer, every record keeper, and every Nazir of a Court of Justice, and every officer of a Court of Justice, whose duty it is, as such officer, to investigate or report on any matter of law or fact;
Every head jailer;
Every darogha of police;
Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of the Government, or to make any survey, assessment, or contract on behalf of the Government; or to investigate, or to report on any matter affecting the pecuniary interests of the Government; or to make, authenticate, or keep any document relating to the pecuniary interests of the Government.

5th. Offences however punishable under any clause of the Penal Code, charged against the following public servants, as such public servants:

Every Juryman;
Every arbitrator to whom any cause has been referred by a Court of Justice.

XI.

Magistrates, their jurisdiction as to offences.

Magistrates are empowered to try all offences not assigned to the exclusive jurisdiction of the High Court or Session Court.

XII.

Subordinate Criminal Courts, their jurisdiction as to offences.

Subordinate Criminal Courts of the first and second classes are empowered to try offences entered in Schedule A. of the Code of Procedure as triable by those Courts respectively.

XIII.

Session Court not to pass sentence in cases punishable with death.

In cases tried by the Courts of Session in which the defendant is convicted of any offence which, by the Penal Code, is punishable with death, the Court shall not pass judgment, but shall refer the case to the High Court, which shall pass judgment thereon.

XIV.

It shall be competent to a Session Judge, on cause shown, to direct the transfer of any criminal case from any Criminal Court to any other Criminal Court of equal or superior jurisdiction in his district. Session Court may direct transfer of a criminal case.

XV.

Magistrates are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding two years, or to fine exceeding 1,000 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code. Magistrates, their penal jurisdiction.

XVI.

Judges of the Subordinate Criminal Courts of the 1st Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding one year, or to fine exceeding 200 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code. Subordinate Criminal Courts, 1st class, their penal jurisdiction.

XVII.

Judges of the Subordinate Criminal Courts of the 2d Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding three months, or to fine exceeding 50 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code. Subordinate Criminal Courts, 2d class, their penal jurisdiction.

XVIII.

In every case punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of Clauses 51 and 52 of the Penal Code, in awarding the period of imprisonment in default of payment of the fine; provided, however, that in such cases decided by the Magistrate and Subordinate Criminal Courts, the period of imprisonment awarded in default of payment of the fine shall in no case exceed one fourth of the period of imprisonment which such Magistrate or Subordinate Criminal Court is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine. Imprisonment in default of payment of fine.

XIX.

It shall be competent to the Government to direct that any Subordinate Criminal Court shall be authorized to hold the preliminary inquiry into cases triable by the Session Courts, and to commit or hold to bail parties to take their trial before such Courts, and to exercise all the powers necessary for such purposes. Subordinate Criminal Courts may be empowered to prepare cases for trial before the Session Court.

Before offering any explanation of the foregoing rules, it will be expedient to explain shortly the institutions under which the criminal law is at present administered.

The Supreme Court at the presidency town has the power to summon grand and petit juries, and to administer criminal justice as in the Courts of oyer and terminer in England. It exercises criminal jurisdiction over all persons residing within the limits of the town of Calcutta, and over all British subjects for crimes committed at any place within the limits of the Company's charter. It also takes cognizance of crimes committed in any of the lands or territories of any native prince or state, in the same way as if the same had been committed within the territories subject to the British Government in India.

The justices of the peace and magistrates of the town of Calcutta take cognizance of crimes, by whomsoever committed, within the local limits of the town; and the course of procedure which they follow is the same as that followed by magistrates in England.

For the provinces beyond the town of Calcutta there are four orders of Courts: the Nizamut Adawlut, the Session Court, the magistrate, and his subordinates. These will be more particularly alluded to hereafter. The law which these Courts administer is the Mahomedan law, as

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modified by the Regulations of the Bengal Code and the Acts of the Government of India, in which also the procedure which they follow is laid down. They take cognizance of crimes committed by persons of whatever class, with the exception of European British subjects, over whom they exercise a limited power of fine and imprisonment, under the provisions of 53 Geo. 3. cap. 155. s. cv., and whom for more serious offences they send for trial before the Supreme Court.

The abolition of the Supreme Court has thus the effect of abolishing the only Court, with one exception to which we shall presently refer, for the trial of European British subjects charged with the commission of criminal offences. The mode in which such cases are in future to be dealt with must be settled as a preliminary to the adoption of any general measure for the administration of criminal justice in India. We assume that the special privileges now enjoyed by British subjects are to be abolished; and we therefore make no provision for such exceptional cases. In the system which we propose all classes of the community will be equally amenable to the Criminal Courts of the country.

The High Court, by one or more of its judges, will be the Court for the trial of offences committed within the town of Calcutta. The other Courts for the administration of criminal justice will be the Courts of Session, the Courts of the magistrates, and Subordinate Criminal Courts of the first and second classes.

Session Courts.

The present Courts of Session hold monthly sessions for the trial of the graver offences. There is one in each district. The session judge is the head criminal authority in the district, and is the same person as the zillah judge. His jurisdiction is partly original and partly appellate. His original jurisdiction is restricted to persons committed by the magistrate. His appellate jurisdiction extends, with some very partial exceptions, to all sentences and orders passed in judicial trials by the magistrate or his subordinates. *By law* he is empowered to pass sentence in cases of conviction, except where the sentence is for death or imprisonment for life, in which case he must transmit copies of the proceedings on the trial to the Nizamut Adawlut, and await its final sentence. *In practice*, he refers to the Nizamut Adawlut every case in which he considers the party convicted to be deserving of more severe punishment than fourteen years imprisonment.

It is proposed to retain the Session Courts, but to enlarge their powers of punishment. In this point, we differ from the Law Commission in India, who, in their report on a scheme of pleading and procedure in criminal cases, dated the 1st February 1848, proposed to confine the power of the session judge to punish by banishment or imprisonment to the extent of seven years. The ordinary course is for the Court which has tried the prisoner to complete the trial, by pronouncing sentence upon him. The law of the presidency of Bengal has practically conferred this power upon the session judges to the extent of fourteen years imprisonment; but at this stage it interposes the authority of another Court between the conviction and sentence. We see no valid reason for the limitation of the powers of the session judge at this particular point. We propose to allow the session judges to pass sentence in all cases except those in which the defendant is convicted of an offence punishable with death. We are of opinion that the question of the infliction or remission of capital punishment should be reserved for the decision of the High Court. We would leave all other cases of conviction to be brought before the High Court, either by appeal, or by requisition of the Court itself, under the rules of the code prepared by us bearing upon those parts of the procedure.

Magistrate.

There is a magistrate to every district. He is the superintendent of the police in his district, and also exercises extensive judicial powers. In cases of assault and other petty offences, he has power to punish to the extent of six months imprisonment and 200 rupees fine; in cases of affray, to the extent of one year's imprisonment and 200 rupees fine; and in cases of burglary and theft, under certain exceptions, to the extent of three years imprisonment. It is proposed to empower the magistrate to pass sentence of imprisonment for a term not exceeding two years, and fine not exceeding 1,000 rupees. By the fifty-first and fifty-second clauses of the Penal Code, a party convicted of an offence punishable by fine and imprisonment, and sentenced to fine, with or without imprisonment, may be imprisoned, in default of payment of the fine, to the extent of one fourth of the term of imprisonment which is the maximum fixed for the offence. We propose that the imprisonment which a magistrate may inflict in default of payment of fine shall in no case exceed one fourth of the imprisonment which he is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of fine. The maximum period, therefore, to which the magistrate will be empowered to punish for a single offence, under the powers which it is now proposed to confer upon him, will in no case exceed two years and six months.

The magistrates of Calcutta are empowered in certain cases to punish to the extent of six months' imprisonment. As under the new system which it is intended to introduce they will administer the same law as the magistrates in the provinces, we propose to invest them with the same powers as are to be exercised by the latter.

The question of the equalization of the powers of the magistrates of Calcutta and of the mofussil districts has led to the further question, to what extent the power of summary conviction and punishment should be conferred upon officers of this class; whether the jurisdiction of the Calcutta magistrate is to be raised to that of the mofussil magistrate, or the jurisdiction of the mofussil magistrate is to be reduced to that of the Calcutta magistrate. The preamble of the regulation which conferred upon the mofussil magistrate the most extensive powers which he can now exercise points out, among other reasons for the measure then adopted, the unnecessary occupation of the time of the session judges under the previous system, in the investigation of offences which, from their character and from the circumstances attending their perpetration, do not very frequently demand any severe or exemplary degree of punishment, and the distress and inconvenience occasioned to prosecutors and witnesses by their being compelled to attend during the inquiry before the magistrate, and the trial before the Sessions Court, for the prosecution of offences the punishment of which by the magistrate himself would more promptly and effectually attain the ends of justice. These reasons are not of less cogency at the present time; and, as no complaint has been made of the abuse of the enlarged power conferred upon the magistrates upwards of thirty-five years ago, we propose to

give them the jurisdiction, as nearly as the provisions of the Penal Code will admit, which they at present exercise.

Subordinate Courts.

At present there are numerous Courts in the provinces for the trial of offences, besides those of the magistrate: viz., the assistant with special powers, the assistant with ordinary powers, the deputy magistrates of various grades, the law officers, and the principal sudder ameen and sudder ameen, who, *ex officio*, exercise certain criminal powers. The assistant with special powers is empowered to pass sentence of imprisonment to the extent of six months, and fine to 200 rupees. The assistant with ordinary powers can imprison for a month, and fine as far as 50 rupees. The powers of the law officer, and of the principal sudder ameen and sudder ameen, *ex officio*, are the same as those of the assistant with ordinary powers. The deputy magistrates are of three grades, appointed, at the discretion of the Government, to act either as judicial officers, or as officers of police, or both. As judicial officers they exercise the full powers of the magistrate, or the powers of the assistant with special powers, or those of the assistant with ordinary powers, according to the terms of their respective appointments. The *assistants* are members of the covenanted civil service; the rest of the officers above enumerated exercising criminal jurisdiction are not. Many of the principal sudder ameens are now deputy magistrates with the full judicial powers of the magistrate.

We propose to divide these Courts into two classes, and to designate them Subordinate Criminal Courts of the first and of the second class. The assistant exercising special powers, and the deputy magistrates of the existing first and second grades, might be denominated first assistant or senior deputy magistrate, or by such other term as the Government of India might determine; and these officers, together with the principal sudder ameens, might be judges of the subordinate Courts of the first class. All the officers now exercising the jurisdiction of an assistant with ordinary powers might be denominated second assistant or junior deputy magistrate, and these, together with the moonsiffs, might be judges of the subordinate Criminal Courts of the second class. The moonsiffs do not, *as such*, exercise criminal jurisdiction; they may, however, be appointed deputy magistrates, at the pleasure of the Government. The plan which we suggest will give to each district one standing subordinate Court of the first class, besides the magistrate and the Session Court, and to each subdivision of a district one standing subordinate Court of the second class; and the conferring of criminal powers on the moonsiff will produce convenience, by placing a criminal Court for the trial of petty offences within a comparatively short distance of every man's residence. There is nothing in the plan, however, to limit the number of the subordinate criminal Courts, and the Government will thus be enabled to meet the wants of a district which may require a larger staff of criminal officers than is furnished by the number of officers exercising civil jurisdiction.

It is proposed that the judges of the subordinate Criminal Courts of the first class shall be empowered to pass sentence of imprisonment for a term not exceeding one year, and fine not exceeding 200 rupees, and those of the Courts of the second class to pass sentence of imprisonment for a term not exceeding three months, and fine not exceeding 50 rupees. The subordinate Criminal Sourts of both classes will be subject to the same restrictions as the magistrate in awarding imprisonment in default of payment of fine in cases punishable by fine and imprisonment.

All officers invested with the full powers of magistrate are now competent to make commitments to the Session Courts. We suggest that Government should have power to invest any Criminal Court with the power of committing or holding to bail persons to take their trial before the Session Courts. The exercise of such a power by the subordinate Criminal Courts of the second class, while it relieves the pressure on the magistrate, will tend greatly to the convenience of the community and the disposal of business. The subordinate Courts will, in this as in every other branch of their duties, act under the superintendence of the magistrate.

The schedule to which reference is made in the rules regulating the jurisdictions of the several Criminal Courts will, of course, form part of the Code of Procedure.

By the 12th and 13th Vict. cap. 43. sec. iv., it is provided that officers and soldiers of Her Majesty's Army, serving anywhere beyond 120 miles from the Presidencies in India may be tried by general court-martial for criminal offences. The obvious reason for such a provision was the inconvenience of sending the accused to be tried before the Supreme Court at the Presidency. In the event, however, of the adoption of the system which we propose, it will probably be considered expedient to make some alteration in the existing law.

Proposed Code of Procedure for the Courts of Criminal Judicature in Bengal.

CONTENTS.

Introductory Notes.

At the outset of our proceedings in the preparation of a Code of Criminal Procedure, a difficulty occurred to us, from our want of information as to the substantive criminal law which it was intended that the proposed Code of Criminal Procedure should be the means of enforcing. We pointed this out to the Board of Control by a communication made in March 1854. We have since been furnished with a copy of a communication from a committee of the Legislative Council of India, from which the following extract is taken: " We " have come to the conclusion to recommend to the Council, that the Penal Code, as originally " prepared by the Indian Law Commissioners when Mr. Macaulay was the president of that " body, should form the basis of the system of penal law to be enacted for India. We " are accordingly taking into consideration the various alterations therein and additions " thereto that have been proposed to be made; and we intend to submit to the Legislative " Council a revised code embodying such of the proposed alterations and additions as may " appear to us to be improvements, and such other amendments as may suggest themselves to " us in the course of our revision. We do not intend to recommend any substantial alteration " in the framework or phraseology of the original code. Any Code of Criminal Procedure " which would be generally applicable to the original Penal Code will be generally applicable to " such a revised code as we intend to recommend." In accordance with this, our system refers throughout to the Penal Code as originally prepared. If any substantive alterations shall have been introduced into the code, it will probably not be difficult to make any modifications of the Code of Criminal Procedure that may be necessary to accommodate it to the change.

In regard to the provinces, two courses were open to us: either to frame rules for extending to British subjects the present procedure of the mofussil Courts, with such alterations and additions as might have been deemed necessary to give effect to certain provisions of the Penal Code; or to prepare a new code, simple in its operation, and based to a great extent upon the existing system, which, though susceptible of great improvement, experience has shown to be, in the main, well adapted to the circumstances of the country.

New rules of procedure will be necessary for the guidance of the Court which is to be established at Calcutta for the trial of offences committed within the limits of the town; and the code which is applicable to Calcutta will, in most of its essential features, be applicable also to the mofussil.

A new code, or the extension of the existing one, is also necessary in regard to the European British inhabitants of the mofussil. It is manifest that this class of persons ought not to be thrown, by a brief Act of the Indian Government, upon the mass of legislation which has been accumulating for the last sixty years. A single short and simple code, to take the place of the numerous provisions which are scattered through the Regulations of the Bengal Code and the Acts of the Council of India, from the year 1793 to the present time, cannot but prove a benefit to the country at large.

New rules are further called for to give effect to many of the provisions of the Penal Code.

These reasons appear to justify the course of preparing a new Code of Procedure for the guidance of the criminal Courts, instead of merely supplying the deficiencies of the existing code. The rules for the establishment of the several criminal Courts, and the Code of Procedure prepared by the Commission, together with the Penal Code now under the consideration of the Legislative Council in India, will, on becoming law, convey full information in regard to the criminal Courts of the Lower Provinces of the Bengal Presidency, and the criminal law which they administer. Not that these codes entirely exhaust the duties which pertain to the office of magistrate in India, or furnish materials for the guidance of that officer in the exercise of all the powers and functions which belong to him. As the superintendent of the police of his district, and as the arbiter between contending parties in the settlement of disputes relating to land, as well as in some other parts of his various duties, the magistrate is left to the rules now in force; but in the codes of law and procedure above adverted to, and in the general rules for regulating the practice and proceedings of the criminal Courts, to be framed by the High Court, will be found, as we trust, all that is necessary for the guidance of the police, the magistracy, and the several Courts of justice in the investigation and trial of criminal offences.

There are occasional references in the Penal Code to the Code of Procedure, a violation or contravention of the provisions of which is, in certain instances, as in Clauses 130, 135, and 207, necessary to the constituting of the offence defined in the code. We have thought it advisable to confine ourselves to the general provisions necessary for the regulation of Criminal Procedure, and to leave such special rules as those to which we have referred, to be framed by the Legislative Council in India, who have the Penal Code now under their consideration.

CHAPTER I.

Preliminary Rules.

I.

No institution stamp fee, or deposit.

No stamp duty or fee shall be required on the institution of any criminal case, or on the entry of any appeal from the decision or order of any Criminal Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Criminal Court, except such fees or charges as may be set forth in tables to be prepared as provided in the next succeeding article.

This, and the two following rules, correspond with the rules of civil procedure on the same subjects.

II.

Table of fees and charges to be prepared.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Criminal Courts comprised in any zillah by the session judge and magistrate of the zillah, under the direction of the High Court, and for the High Court by the judges thereof. A copy of the table of fees and charges so prepared, which may be applicable to any Criminal Court, shall, after they shall have received the sanction of the Governor General in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him than such fees or charges as may be set forth in such table.

III.

Complainants and witnesses to be examined without oath, affirmation, or warning.

All complainants and witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their preferring complaints or giving evidence, and they shall, upon such examination, be bound to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

IV.

No person excepted from Criminal Procedure by reason of place of birth or of descent.

No person whatever shall, by reason of place of birth, or by reason of descent, be excepted from the rules of Criminal Procedure.

This rule will obviate all doubt as to the competency of the police in the Mofussil to investigate cases coming within their cognizance, whether committed by European British subjects or others. It necessarily follows the rule in Article VIII. of the rules relating to the Criminal Courts of Original Jurisdiction.

CHAPTER II.

Obtaining a Summons or Warrant.

V.

Proceeding to compel appearance.

Where an offence has been committed, or is suspected to have been committed, the proceeding, in order to compel the party known or suspected to have committed such offence to appear for the purpose of preliminary inquiry concerning the same, may be by summons or arrest.

The Articles from V. to LXVIII., comprised in this and the three succeeding chapters, have been taken, with such alterations as were necessary to adapt them to the system of police in the Bengal Presidency, from the Eighth Report of Her Majesty's Commission on the Criminal Law of England. The law on the different subjects of summons, warrant, and arrest, is in many respects the same in both countries, and the rules prepared for the one admit of a ready application to the other.

VI.

Summons.

The proceeding by summons may be in the cases and shall be subject to the rules herein-after contained.

VII.

Arrest.

The proceeding by arrest may be either,—

1. By warrant;
2. Or by a private person without warrant;
3. Or by an officer without warrant.

VIII.

Complaint.

A summons, or a warrant of arrest, may be obtained on such complaint as is mentioned in the next succeeding article.

IX.

To be reduced into writing and signed.

Every complaint made before a magistrate or darogha of police, in order to the issuing of a summons or a warrant against a person accused of any offence, either directly or on suspicion, if not written shall be forthwith reduced into writing, and shall be signed by the complainant, and also by the magistrate or darogha of police issuing the summons or warrant.

The magistrate is the head of the police of his district. A district comprises several divisions, each of which has a police force, consisting of the *Darogha* or head police officer, the *Mohurrir* or clerk, the *Jemadar* or serjeant of police, and a number of *Burkundazes* or constables, who are partly stationed at the chief police station of the division, and partly at outposts scattered throughout it in various directions. The power of the police in India to issue process on complaint is more fully adverted to in the note to Chapter VII.

X.

Magistrate, how to proceed on complaint.

Upon such complaint duly made before a magistrate, he shall, in case it appear to him that there is sufficient ground for proceeding, issue his summons or warrant for causing the person accused to appear before himself or some other magistrate or Court having jurisdiction; and if in the judgment of such magistrate there be no sufficient ground, he shall dismiss the complaint, whether it be direct or on suspicion only.

The term "Court having jurisdiction," is intended to apply to the case of a warrant issued by a magistrate, but made returnable to a subordinate Criminal Court. (*See* Article CCXXX.)

XI.

Upon such complaint duly made before a darogha of police, he shall, in case it appear to him that there is sufficient ground for proceeding, and that the immediate apprehension of the accused is necessary to the ends of justice, issue his summons or warrant for causing the person accused to appear before himself; and if in the judgment of such darogha there be no sufficient ground, or the immediate apprehension of the accused is not necessary to the ends of justice, he shall abstain from issuing any process, and shall submit the complaint for the orders of the magistrate.

Darogha of police how to proceed on complaint.

XII.

Every summons issued by a magistrate or darogha of police to a person so accused shall be in writing, under the hand and seal of the magistrate or darogha of police issuing it; shall show his office; that the summons is made on a complaint duly made of an offence committed, or suspected to have been committed; shall be directed either to the person accused by such complaint, or some other person; if directed to the person accused it shall, if issued by the magistrate, direct him to appear before the magistrate issuing such summons, or some other magistrate or Court as aforesaid, at a time and place specified; and if issued by a darogha of police, to appear before such darogha at a time and place specified; and if directed to any other person it shall require such other person to summon the person accused so to appear.

Summons, what it is to contain, and how to be directed.

According to the practice of the Mofussil Courts of the Bengal Presidency every process is sealed as well as signed. It is proposed to continue this practice, as the seal is a sufficient authority with all, while only a few are acquainted with the character in which the signature of an European functionary is recorded.

XIII.

If such summons be directed to the person accused, it may either be served on him personally or left with some adult member of his family.

Summons, how to be served.

XIV.

A magistrate or darogha of police may, notwithstanding such summons, either before the appearance of the person accused, as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person in all cases in which he might so have done had no such summons been issued.

Notwithstanding summons, warrant may issue in certain cases.

XV.

A magistrate of one district or darogha of one division may grant a warrant for the apprehension of a suspected offender within that district or division, as the case may be, in respect of an offence of which the law takes cognizance, committed in a different district or division, or on the high seas, or in a foreign country.

Warrant when grantable for an offence committed beyond local jurisdiction.

XVI.

When a person or several persons shall be accused of the commission of any offence, by reason of any things which have been done, or by reason of any thing or things which have been done and consequence or consequences which have occurred, every such offence may be inquired of and determined, and every such offender prosecuted and punished, in any district or jurisdiction in which any such thing shall have been done, or any such consequence shall have occurred.

Where an offence may be investigated and tried in one of two or more jurisdictions.

The law of the Bengal Presidency now requires, that with one or two special exceptions every offence shall be prosecuted and punished in the district in which it was committed, and any departure from this rule can only take place under the express sanction of the Nizamut Adawlut, the highest Criminal Court, or the Government of the Presidency. The rules in Articles XVI. to XXV. inclusive have been, in substance, taken from the Eighth Report of the Commission on the Criminal Law of England, as preferable to the existing rules of the Bengal Code. The offences are described by the terms used in the Penal Code.

XVII.

The previous abetment of an offence, wherever such abetment may have taken place, may be inquired of and determined in any place or district in which that offence may be inquired of and determined, and by any Court which has jurisdiction to try that offence, as though the previous abetment had been committed at the same place at which that offence was wholly or partly committed.

Abetment.

M 4

XVIII.

Abetment.

Provided, that such abetment may be inquired of and determined in any district within which the abettor has done anything for abetting the commission of that offence.

XIX.

Offence committed on boundary.

Where any offence shall be committed on the boundary or boundaries of two or more districts or divisions, or within the distance of 500 yards of any such boundary or boundaries, or shall be begun in one district or division and completed in another, every such offence may be inquired of and determined in any of the said districts or divisions in the same manner as if it had been actually and wholly committed therein.

During journey, &c.

Where any offence shall be committed on any person or on or in respect of any property in or upon any coach, cart, or other carriage, or upon any beast of burden employed in any journey, or shall be committed on any person or on or in respect of any property on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, such offence may be inquired of and determined in any district or division through any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had been actually committed in such district or division; and in all cases where the side, middle, or other part of any highway, or the side, bank, middle, or other part of any such river, canal, or navigation, shall constitute the boundary of any two districts or divisions, such offence may be inquired of and determined in either of the said districts or divisions through or adjoining to or by the boundary of any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had actually been committed in such district or division.

Receiving, &c. stolen property.

Whosoever shall fraudulently receive, or fraudulently have in possession, any stolen property, knowing the same to be stolen property, may be prosecuted and punished in any district or place in which he shall have or shall have had such stolen property in his possession, or in any district or place in which any person by whose offence that property came to be stolen property may be prosecuted and punished.

XXII.

Unlawfully receiving property.

Whosoever shall commit any offence by unlawfully receiving or having in possession any moveable property, knowing the same to have been unlawfully taken, obtained, or converted, may be prosecuted and punished in any district or place in which he shall have or shall have had such property in his possession, or in any district or place in which any person who unlawfully took, or obtained, or converted such property, may be prosecuted and punished for any offence committed thereby.

XXIII.

Escape from lawful custody under sentence.

Any offender who shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice, or by virtue of a commutation of such sentence, may be prosecuted and punished either in the district where he shall be apprehended and retaken, or in the district in which the said offence shall have been committed.

XXIV.

Returning from transportation or banishment.

Any offender who shall return from transportation or banishment, the term of such transportation or banishment not having expired, and his punishment not having been remitted, may be prosecuted and punished either in the district or place where he shall be apprehended, or in that in which he was formerly tried.

XXV.

Any person who shall commit any offence by forgery, or by using as genuine any document which he knows to be forged or falsified by forgery, may be prosecuted and punished in any district or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that district or place. Forgery.

XXVI.

In the preceding articles, and any other article of this Act, wherever the district or other place or the Court in or before which any offence is to be inquired of and determined, or any offence is to be prosecuted and punished, is mentioned, the term "inquired of" shall be deemed to comprise every proceeding preliminary to trial; the term "determined," to comprise trial, and every subsequent proceeding, including the punishment of the offender; and the terms "prosecuted and punished," to comprise every proceeding, whether preliminary or subsequent to trial, or upon such trial; unless in any such case there be something in the subject or context repugnant thereto. Definition of certain terms.

XXVII.

The local jurisdiction of the magistrate of a zillah or district shall for the purposes of this Act be deemed a district; and the local jurisdiction of a moonsiff or darogha of police be deemed a division; provided that nothing herein contained shall be held as authorizing a police officer, except under the special authority of the magistrate, to inquire into any of the offences described in the provisions of the Penal Code specified in Article LXXXII. What is a district, and what a division.

The Moonsiff at present exercises only civil powers within his jurisdiction, the local limits of which are the same as those of a police division. It has been proposed by the rules for the establishment of Criminal Courts of original jurisdiction, to invest the Moonsiff with criminal powers also. By this plan every division will have its Civil and Criminal Courts as well as its staff of police.

XXVIII.

The local jurisdiction of the magistrates of Calcutta shall for the purposes of this Act be deemed a district. Calcutta a district.

CHAPTER III.

Of the Warrant and its Execution.

XXIX.

The warrant shall be in the name of the officer who grants it. Warrant to bear the name of grantor.

XXX.

Every such warrant shall be in writing; shall be directed to some person or persons by name or by official description (and in the latter case, either to some particular officer, or to all or some one or more of that class or description); shall specify the person to be arrested by name or by such other description as may be sufficient to distinguish him; shall order that such person be arrested; shall specify the authority before whom such person after arrest shall be taken; shall state, as the cause of arrest, some offence committed or suspected to have been committed in respect of which the magistrate or other officer has jurisdiction to issue such warrant; shall show the person who grants it to be a magistrate or other officer authorized to issue such warrant; shall state the time of making it; show the place where it is granted, either by statement in the body or in the margin of the warrant; and be signed and sealed by the magistrate or other officer who grants it. Form of warrant.

XXXI.

A warrant directed to several persons jointly and severally may be executed by any one of them. Warrant to several persons, jointly and severally.

XXXII.

To several persons jointly.

A warrant directed to several persons jointly, without words excluding the execution by one or a part only of those mentioned, may be executed by any one or by a part only of them.

XXXIII.

To a Darogha or Nazir.

A warrant directed to a darogha of police or to a nazir may be executed by any officer subordinate to such darogha or nazir respectively.

The "Nazir" is an officer on the establishment of the Magistrate's Court. All processes in cases not falling within the cognizance of the police are usually served through the Nazir.

XXXIV.

Officers issuing a warrant may personally superintend its execution.

A magistrate or other officer authorized to issue a warrant or other criminal process may attend personally for the purpose of seeing that the same be duly executed, and may adopt or direct any legal measures that may be necessary for the due execution thereof.

This is the existing law of the Bengal Presidency.

XXXV.

Warrant directed to a person not an officer of police or nazir.

A warrant directed to any other person than an officer of police or the nazir of a Court is to be executed by that person; provided nevertheless, that any other person may, in the presence or out of the actual presence of one authorized to execute a warrant, aid him in executing the same, if the person so authorized be near at hand and acting in the execution of the warrant.

XXXVI.

All persons bound to assist in certain cases.

Every person is bound to assist a magistrate or police officer demanding his aid in the taking of an offender, preventing a breach of the peace, the suppression of a riot, or the taking of the rioters.

XXXVII.

Where a warrant of a magistrate must be executed.

A warrant issued by any magistrate must be executed (unless it be specially otherwise provided) within the jurisdiction of the magistrate from whom it issued, or of the magistrate by whom it has been duly indorsed for execution.

XXXVIII.

Warrant indorsed in another jurisdiction.

In case any person against whom a warrant shall be issued by any magistrate shall escape, go into, reside, or be, or be supposed to be, in any place out of the jurisdiction of the magistrate granting such warrant, the magistrate of the place into or in which such person shall escape, go, reside, be, or be supposed to be, shall indorse his name on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant within the jurisdiction of the magistrate who indorsed such warrant, and to apprehend and carry such person before the magistrate who indorsed such warrant, or before the magistrate of the district where the offence was committed. In case such person be carried before the magistrate who indorsed the warrant, and the offence with which he is charged is bailable in law, he shall be proceeded with in the manner herein-after mentioned in Article CXXI. or Article CLXXXII. If the offence be not bailable, he shall be forwarded to the magistrate of the district in which such offence was committed.

XXXIX.

Warrant to be indorsed may be sent by post.

Provided that it shall be competent to a magistrate issuing a warrant for the arrest of a person out of his jurisdiction to direct the warrant to the magistrate of the district in which such person is, or is supposed to be, and to transmit the same by post. On the receipt of the warrant by the magistrate to whom it is directed, he shall indorse his name on such warrant, and enforce its execution in the same manner as if the warrant had originally issued from himself. On such person being apprehended, and carried before the magistrate

who indorsed the warrant, he shall be dealt with as provided in the last preceding article.

The existing practice is for the magistrate before whom the information is laid to send, by post, a proceeding to the magistrate in whose jurisdiction the party accused is, or is supposed to be, and to request him to issue the warrant of arrest. The procedure recommended in these rules requires, that in every case the process of arrest shall be issued by the magistrate before whom the information has been laid.

XL.

Magistrate how to proceed on arrest under his own warrant for an offence committed out of his jurisdiction.

If a person for whose apprehension a warrant has been granted by a magistrate under the provisions of Article XV. is suspected of an offence committed in a different district, the magistrate granting the warrant shall, unless he is authorized by any law to complete the inquiry himself, send the person arrested to the magistrate of the district in which the offence was committed, or take bail for his appearance before such magistrate if the offence of which he is suspected is bailable in law; and in all other instances the magistrate shall report the case for the orders of the High Court.

XLI.

Darogha how to to proceed in such cases.

If the warrant under Article XV. shall have been granted by a darogha, the darogha shall send the person arrested to the magistrate, to whom such darogha is subordinate, unless the offence of which the person arrested is suspected shall have been committed in another division of the district in which the division of the darogha who granted the warrant is comprised; in such case the darogha who granted the warrant shall send the person arrested to the darogha of the division in which such offence was committed.

XLII.

Where a warrant of a police officer must be executed.

A warrant issued by a police officer must be executed (unless it be otherwise specially provided) within the jurisdiction of the officer who issued it.

XLIII.

When a warrant of arrest may be executed.

An arrest on a warrant for any of the offences specified in Schedule A. of this Code of Procedure as not bailable offences may be made on any day, and at any time of the day or night. It shall be at the discretion of the magistrate to direct that an arrest on a warrant in any other case may be made on any day, and at any time of the day or night.

XLIV.

Warrant, how to be executed.

In making an arrest the officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by words or actions.

XLV.

No unnecessary restraint.

After arrest the prisoner shall not be subjected to any more restraint than such as may be necessary to prevent his escape.

XLVI.

Notification of purpose to act under the warrant.

One executing or attempting to execute a warrant of arrest is bound to notify to the person against whom such warrant is directed, that he purposes to act under the authority of that warrant.

XLVII.

Notification of substance of warrant.

An officer or other person executing a warrant of arrest must notify the substance of the warrant, and show the warrant, if sight of it be demanded.

XLVIII.

Taking and refusing to give up a warrant.

If on a warrant being shown any person take hold of it, and illegally refuse to give it up to the officer or other person authorized to execute it, such officer or other person may retake it by force, provided he use no greater degree of violence than is necessary for the purpose.

XLIX.

Resisting an endeavour to arrest.

If, after notice by one authorized by warrant to arrest another of his intention to arrest him, the person against whom such warrant is issued shall forcibly resist the endeavour to arrest him, the person so authorized is bound to use all such means as may be necessary to effect an arrest and prevent escape.

L.

Breaking of outer door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any outer door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

The presence of witnesses is required by the existing laws of the Bengal Presidency. It acts as a check upon the police in preventing an abuse of their powers, while at the same time it upholds them in the due exercise of such powers, by preventing unfounded accusations against them.

LI.

Officer, &c. breaking out to liberate himself.

An officer or other person having lawfully entered a dwelling house for the purpose of executing criminal process, or of arresting any person under any of these articles, may lawfully break out of such house when it is necessary for his own liberation; and any officer may lawfully break any outer or inner door or window of a dwelling house in order to liberate any officer or other person who, having entered for such purpose, is unlawfully detained within such dwelling house.

LII.

Breaking of inner door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any inner door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LIII.

Breaking open a *zenanah* or female apartment.

If information be received that a person accused of any offence for which a warrant may issue on complaint, has concealed himself in a zenanah or female apartment in the actual occupancy of women, the officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused, and shall endeavour to ascertain, by the means of two respectable women unconnected with the family or with each other, whether the person against whom the warrant has been issued be really concealed in the zenanah; in which case, and if such person shall not deliver himself up, the police officer or other person authorized to execute the warrant may, in the presence of two or more respectable residents of the place, break open the zenanah, and execute the process intrusted to him, giving notice at the same time to any women in the zenanah that they are at liberty to withdraw.

This is an existing rule called for by the circumstances of the country.

LIV.

Breaking of doors, &c. for offences not previously provided for.

It shall be at the discretion of the magistrate to direct, in any particular case, that a warrant of arrest shall be executed as provided in Articles L., LII., and LIII., for any other offence than the offences for which a warrant may issue on complaint.

LV.

Party arrested to be brought immediately to the authority mentioned in the warrant.

After arrest made, the officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested to the magistrate or other authority mentioned in the warrant.

LVI.

If, after arrest made, circumstances render it impracticable to bring the person arrested immediately before the magistrate, the officer or other person executing the warrant shall detain the person arrested in custody in the meantime, and bring him before the magistrate as soon as his doing so shall become reasonably practicable. or as soon as practicable.

LVII.

No officer or other person, after the arrest of any suspected person, is to offer to him any inducement, by threat or promise or otherwise, to make any disclosure, but shall, when necessary, apprize him of the cause of arrest, and leave him free to speak or keep silence; and no such officer or other person shall after such arrest prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will. No threat, promise, or caution, as to disclosure by party arrested.

CHAPTER IV.

Of Arrest without Warrant.

LVIII.

A police officer or other person who sees any offence committed for which a warrant may issue on complaint, may, without warrant, arrest the offender. Arrest on view.

LIX.

A police officer may, without warrant, arrest of his own authority a person against whom a reasonable complaint of an offence for which a warrant may issue on complaint is made, or who may be found with stolen goods in his possession. On complaint, or finding with stolen goods.

LX.

A police officer, or other person, may, without warrant, arrest a proclaimed offender, or a person against whom a hue and cry has been raised of his having been concerned in a recent offence. A proclaimed offender: hue and cry.

For proclaimed offender see Article CXXII.

LXI.

If a person liable to arrest without warrant under the foregoing rules, shall enter into and conceal himself in a dwelling house, the person who might otherwise have arrested shall take such precautions as may be necessary to prevent the escape of the accused, and send immediate information to the magistrate or darogha of police; but no house shall be broken into for the purpose of arresting any person without a warrant. A party liable to arrest concealing himself.

LXII.

A police officer may, of his own authority, interpose for the prevention of a breach of the peace committed or attempted to be committed in his view; and in the event of disobedience or resistance may, without warrant, arrest the offender. Breach of the peace.

LXIII.

A police officer may apprehend any person who obstructs him while in the execution of his duty, and carry him before the magistrate, or before the head officer of the police division. Obstruction of a police officer in his duty.

LXIV.

It is not necessary to notify the cause of arrest where the person is in the actual commission of any offence, or where fresh pursuit is made after any such person, who, being disturbed, makes his escape. When it is not necessary to notify cause of arrest.

LXV.

Party arrested to be taken immediately before the proper authority.

A police officer or other person, having arrested a person for an offence, is to take or send him before the magistrate or the head officer of the police division, without unnecessary delay.

LXVI.

Arrest for an offence commited in the presence of a magistrate.

Where any offence is committed in the presence of any magistrate, he may by word of mouth command any other person to arrest the offender, and may thereupon commit him, or, at his discretion, where the offence is bailable, may admit him to bail.

CHAPTER V.

Of Escape and Re-taking.

LXVII.

Person arresting may retake on escape, and deal with the party arrested as on original taking.

If a person lawfully arrested on a criminal information shall escape or be rescued, it shall be lawful for the person from whose custody such prisoner so escaped or was rescued to make fresh pursuit, and retake him in any place, either within or without the jurisdiction where he was so in custody, and on any day, and at any time of the day or night, and to deal with him as he might have done on an original taking.

LXVIII.

May adopt the same measures as on original taking.

In order to retake any person, within the meaning of the last preceding article, the person so making fresh pursuit as therein is mentioned may adopt the same measures as he might have done on the original taking.

CHAPTER VI.

Of Search Warrant.

LXIX.

When grantable by a magistrate.

Whenever a magistrate, having jurisdiction in respect of a supposed offence, shall consider that the production of any thing or things will be essential to the conduct of an inquiry into such offence, he may grant his warrant to search for such thing or things, and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in any dwelling or dwellings, place or places. In such case the magistrate shall, if he think right, specify in his warrant the dwelling or dwellings, place or places, or part or parts thereof, to which only the search shall extend.

The rules of the Bengal Code in regard to search warrants are confined to the search for stolen property. The Articles of this chapter contain the substance of those rules, extended to the search for anything essential to the conduct of an inquiry into a criminal offence.

LXX.

How to be directed.

The magistrate shall direct his warrant to the police darogha within whose jurisdiction the dwelling or dwellings, place or places, required to be searched, are situated, or to any other public and registered officer of police to whom the magistrate may think fit to commit the execution of that duty. A warrant directed to a darogha may, in the event of the darogha not being able to proceed in person, be executed by any officer subordinate to such darogha, above the rank of burkundaz.

LXXI.

A magistrate may require the magistrate of another district to issue a search warrant in any case in which he may issue such warrant himself.

When a magistrate may require a magistrate of another district to issue a search warrant.

LXXII.

In cases of emergency, a magistrate may grant his warrant for the search of any thing or things concealed, or supposed to be concealed, in a dwelling or dwellings, place or places, out of his jurisdiction, the production of such thing or things being essential to the conduct of an inquiry into an offence committed within his jurisdiction. When a magistrate grants a warrant under this article, he shall inform the magistrate of the district in which the dwelling or dwellings, place or places, to be searched, are situated.

When a magistrate may grant a search warrant out of his jurisdiction.

The power conferred by this rule is to be exercised only in cases of emergency. The possession of such a power by the magistracy will, it is believed, be found to conduce materially to the ends of justice, in a country in which the jurisdictions of magistrates are very extensive, those officers themselves widely separated from each other, and the facilities for removing stolen property very great.

LXXIII.

Whenever a darogha shall consider that the production of any thing or things will be essential to the conduct of an inquiry into any offence which he is authorized to inquire into, he may grant his warrant to search for such thing or things in any dwelling or dwellings, place or places, within his division, which shall be specified in his warrant; and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in such dwelling or dwellings, place or places.

Search warrant when grantable by a darogha.

LXXIV.

The darogha shall, if practicable, conduct the search in person; but if unable to proceed in person, shall direct his warrant to any police officer of his division above the rank of burkundaz.

How to be executed.

LXXV.

A darogha may require the darogha of another division, whether subject to the same magistrate as himself or to the magistrate of any other district, to issue a search warrant in any case in which he may issue such warrant himself.

When a darogha may require a darogha of another division to issue a search warrant.

LXXVI.

The darogha, when not specially instructed by the magistrate, shall transmit all representations made to him regarding the receipt or concealment of any thing or things the production of which is essential to the conduct of an inquiry into an offence, at or before the time when he proceeds to the search, for the information of the magistrate, and for any orders which he may deem it necessary to issue on the subject.

Representations regarding anything for which search is to be made to be sent to magistrate.

LXXVII.

The search shall be made in the daytime, except in cases of great emergency, and where the information is positive, and not on suspicion only, when it may be made either in the daytime, or in the night-time.

When the search is to be made.

LXXVIII.

If the door be shut, the person charged with the execution of the warrant may proceed to break open the door, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of door.

LXXIX.

If the place ordered to be searched is a zenanah or female apartment in the actual occupancy of women, the officer charged with the execution of the warrant shall give notice to any women in the zenanah that they are at liberty to

Breaking of a zenanah or female apartment.

withdraw; and, after giving such notice, and allowing a reasonable time for the women to withdraw, such officer may enter the zenanah for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

See note Article LIII.

LXXX.

Search to be made in the presence of witnesses. Occupant of the place searched may attend.

The search is to be made in the presence of three or more respectable inhabitants of the place in which the dwelling or dwellings, place or places searched, may be situated, and such persons shall subscribe their names to the report made to the magistrate; and the occupant of the house, or owner of the house, or some person in his behalf, shall in every instance be permitted to attend during the search.

LXXXI.

Property, &c. to be sent to the magistrate.

All property which is claimed as having been stolen, as well as all property suspected to have been stolen, found on persons accused of robbery or theft, or which is seized by police officers under suspicious circumstances, as also anything the production of which is essential to the conduct of an inquiry into an offence, shall be forwarded without delay, together with a despatch, to the magistrate. A copy of the despatch being registered, the original is to be given to the officer charged with the conveyance of the property, to be delivered to the nazir, or other proper officer, on his arrival at the station of the magistrate.

The term "despatch" is of frequent use in the police regulations of the Bengal code, and being generally understood through the technical term by which it is translated into the native languages, has been retained in this Code of Procedure.

CHAPTER VII.

Preliminary Inquiry by the Police,

LXXXII.

Offences into which the police officers may not inquire without special authority.

A darogha of police shall not inquire into any of the following offences punishable under the Penal Code, unless specially authorized by the magistrate to do so, viz.:—

Offences under Chap. VIII., provided that it shall be competent to a darogha to apprehend and send to the magistrate any person who may be found in his division in the commission of the offence punishable under clause 150.

Offences under Chap. IX., except the offences punishable under clauses 164, 166, 168, 171, 173, 175, and 182; provided that it shall be competent to a darogha to inquire into any offence under Chap. IX., committed in contempt of his own authority.

Offences under Chap. X., except the offences punishable under clauses 201, 203, 204, and 205.

Offences under Chap. XI., clauses 211, 216, 225, 226, 227, and 228.

Offences under Chap. XIII.

Offences under Chap. XIV., except the offences punishable under clauses 257, 265, 267, 269, 270, and 273.

Offences under Chap. XV.

Offences under Chap. XVI.

Offences under Chap. XVII.

Offences under Chap. XVIII., clauses 312, 313, 318, 325, 332, 333, 334, 335, 336, 337, 342, 347, 348, 350, 351, 352, and 358.

Offences under Chap. XIX., clauses 369, 370, 373, 374, 384, 385, 387, 388, 394, 395, 396, 397, 398, 400, 401, 402, 403, 404, 405, 406, and 425.

Offences under Chap. XX., clauses 453 and 454.

Offences under Chap. XXI.

Offences under Chap. XXII.

Offences under Chap. XXIII.
Offences under Chap. XXIV.
Offences under Chap. XXV.
Offences under Chap. XXVI.

LXXXIII.

Upon complaint duly made before a darogha of police having jurisdiction in the case, against any person for committing any offence, other than the offences described in the provisions of the Penal Code specified in the last preceding article, and which offence is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for the darogha to issue his warrant to apprehend such person, and to cause him to be brought before such darogha. When the darogha may issue his warrant.

LXXXIV.

Provided, that in all cases it shall be lawful for such darogha before whom such a complaint is made, instead of issuing his warrant in the first instance to apprehend the person so complained against, to issue his summons, recording his reason for so issuing his summons, directed to such person, requiring him to appear before such darogha. May issue summons instead of warrant.

LXXXV.

Upon a complaint duly made before a darogha of police, having jurisdiction in the case, against any person for committing any offence into which he is authorized to inquire, and which is punishable with imprisonment for a period not exceeding six months, the darogha shall issue his summons to such person, requiring him to appear before such darogha. When darogha shall issue summons.

LXXXVI.

In the event of its appearing to the darogha that for any special reason the issue of process for causing the attendance of the accused should be stayed until the case be reported for the orders of the magistrate, such report shall be made without delay, and the issue of process against the accused in the meantime suspended. On the receipt of the darogha's report, it shall be at the discretion of the magistrate, if he is of opinion that there are grounds for proceeding with the case, to direct the darogha to proceed with it, or to proceed with it as if the complaint had been made before himself. When the darogha may stay issue of process.

LXXXVII.

Upon the issue of process for causing the attendance of the accused, the darogha shall at the same time issue summonses for the attendance of any persons who appear from the statement of the person making the complaint to be acquainted with the facts and circumstances of the case. Witnesses to be summoned.

LXXXVIII.

Nothing contained in the foregoing articles shall be construed to prevent a darogha from proceeding in person, or deputing a fit person from among the officers acting under him, to ascertain on the spot the facts and circumstances of any case into which he is authorized to inquire. Darogha may proceed in person, or depute an officer to investigate.

LXXXIX.

It shall be lawful for the darogha or other police officer to pursue persons accused of the offences referred to in Article LXXXIII. into the jurisdiction of other daroghas, whether subject to the same magistrate as himself or to the magistrate of any other district. Police may pursue offenders into other jurisdictions.

XC.

The examination of witnesses by the police shall be taken in the presence of the darogha, or, in the event of his absence, in the presence of any officer above the rank of burkundaz, and the substance of any material information obtained Examination of witnesses.

from them shall be reduced to writing, not in the form of question and answer, but in that of a brief narrative, which shall be signed by the person deposing, and transmitted to the magistrate, as herein-after provided, under the signature of the police officer by whom the inquiry may have been made.

XCI.

Police officers not to examine the accused.

It shall not be competent to a darogha or other police officer to examine a person accused of a criminal offence, or to reduce to writing any admission or confession of guilt which he may propose to make.

XCII.

Inquiry by the police.

The darogha, or other police officer, shall complete the inquiry with as little delay as possible, and if the darogha himself have made the inquiry, he shall forward the accused to the magistrate, under the custody of one or more burkundazes, provided the evidence is such as to warrant that course, and the offence be not bailable, and shall bind over the prosecutor and witnesses to appear on or before a fixed day before the magistrate of the district. If a subordinate police officer have made the inquiry, he shall submit his proceedings to the darogha, who shall then proceed as if he had made the inquiry himself.

The last clause of this article is an addition to the existing rules. The object of it is to bring the acts of the subordinate officers under the immediate notice of the head police officer of the division, and to charge the latter with the responsibility of forwarding arrested parties to the mgistrate.

XCIII.

Accused not to be detained by the police beyond 48 hours, without special authority.

Provided, that it shall not be lawful for the darogha or other police officer to detain the accused in custody, without the special orders of the magistrate, for a longer period than forty-eight hours; and provided also, that it shall be competent for a darogha or other police officer, on his being satisfied that there are grounds for believing that the accusation is well founded, to forward the accused to the magistrate at any period of the inquiry before the expiration of forty-eight hours from the apprehension of the accused. The darogha shall forward with the accused a short despatch stating the offence for which the accused has been arrested.

XCIV.

Darogha how to proceed in cases of deficient evidence.

If it shall appear to the darogha that there is not sufficient evidence to warrant the transmission of the accused to the magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and submit his proceedings for the orders of the magistrate.

XCV.

Proceedings of the darogha, of what to consist.

In all cases, in submitting his proceedings to the magistrate, the darogha shall forward the statement of the person complaining and the depositions of the witnesses, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any recapitulation of evidence or expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the magistrate. The darogha shall further state whether he has forwarded the accused in custody, or released him on bail, or on his own recognizance.

Much has recently been done towards the improvement of the mode of recording the proceedings of the police in the investigation of criminal cases. Much, however, still remains to be done. The unnecessarily voluminous mass of papers frequently sent by a darogha to a magistrate may be greatly reduced by a careful supervision, and by enforcing a strict adherence to the rules laid down for the guidance of the police. The report of the darogha, which is not evidence in the case, may safely be limited to the particulars noted in this article.

XCVI.

Bail.

Persons accused of the commission of any of the offences entered in the third column of Schedule A. as not bailable, shall not be admitted to bail, provided that there appear reasonable grounds for believing that such persons have been

guilty of the offence imputed to them; but in all cases of persons accused of any other offences, if sufficient bail be tendered for appearance before the magistrate, the darogha shall accept such bail, and immediately release the party apprehended.

XCVII.

When security for keeping the peace to be required.

In cases of manifest necessity, when the darogha may be apprehensive of danger to the public peace by the enlargement of a person arrested for rioting or other bailable offence, without security being taken for his peaceable conduct, the person so arrested shall be required, in addition to the bail for his appearance, to furnish security for keeping the peace; and the surety or sureties shall execute a recognizance in an amount to be regulated by the circumstances of the case and the condition of the person executing the same. In default of his furnishing the required security, the accused shall be forwarded under custody to the magistrate.

XCVIII.

Police to report all apprehensions.

The officers of police shall report to the magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons may have been admitted to bail or otherwise; and no person who has been apprehended shall be discharged, except on bail, or on his own recognizance, or under the special order of the magistrate.

XCIX.

Bail not to be excessive. Terms of security.

The bail to be taken for appearance before the magistrate, in pursuance of Article XCVI. shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the defendant before the magistrate on or before a fixed day, to answer the complaint.

C.

Prosecutors and witnesses to execute recognizance to appear before the magistrate.

Prosecutors and witnesses, whose attendance may be necessary at the Criminal Courts, shall execute recognizances before the police officers, to appear before the magistrate on a specific day, which shall be the day whereon the accused may be bound to appear, if he shall have been admitted to bail, or on the day on which he may be expected to arrive at the magistrate's place of residence, if he is to be forwarded thither under custody. The police officer in whose presence the recognizance may be executed shall forward it with his report to the magistrate, and shall deliver to the prosecutor or witness a despatch, which the prosecutor or witness shall be required to deliver in person to the magistrate or the nazir of his court, unaccompanied by any officer of police.

CI.

Witnesses not to subjected to restraint. Recusant witness may be forwarded in custody.

The police officers shall not subject witnesses to any restraint or unnecessary inconvenience, nor require them to give any other security for their appearance than their own recognizances; but if any witness shall refuse to attend, or to execute the recognizance directed in the last preceding article, it shall be competent to the darogha to forward such witness under custody to the magistrate.

CII.

By whom the powers of the darogha may be exercised in his absence or illness.

The powers to be exercised by the darogha under the foregoing rules shall be exercised, in the event of his absence or illness, by the head police officer present at the police station above the rank of burkundaz.

CIII.

Service of process issued by the police.

All processes in criminal cases cognizable by the police officers shall be served by the burkundazes at the police station, without any charge to the parties or witnesses.

CIV.

Penalty for taking unauthorized cognizance of offences. Magistrate may direct investigation at his discretion.

The police officers are strictly prohibited, on pain of dismissal from office, from taking cognizance of any of the offences described in the provisions of the Penal Code specified in Article LXXXII., except under the special orders of the magistrate. But it shall be at the discretion of the magistrate to issue such orders to the officers of police, in regard to the investigation of criminal cases, as he shall think proper, and such officer shall be bound to obey the orders of the magistrate.

CV.

How darogha is to proceed in regard to cases triable by the Subordinate Criminal Courts.

When a Subordinate Criminal Court has been authorized to receive cases coming within its jurisdiction on the report of a police officer, the darogha shall forward the accused and submit his proceedings to such court, and shall bind over the prosecutor and witnesses to appear before the same.

CVI.

Rules relating to the police not to apply to Calcutta.

The foregoing rules, from Article LXXXII. inclusive, shall not be held to apply to the town of Calcutta.

The police in the provinces of Bengal are armed with very extensive powers. They are prohibited from inquiring into cases of a petty nature, but complaints in cases of the more serious offences are usually laid before the police darogha, who is authorized to examine the complainant, to issue process of arrest, to summon witnesses, to examine the accused, and to forward the case to the magistrate, or submit a report of his proceedings, according as the evidence may, in his judgment, warrant the one or the other course. The evidence taken by the Parliamentary Committees on Indian Affairs during the sessions of 1852 and 1853, and other papers which have been brought to our notice, abundantly show that the powers of the police are often abused for purposes of extortion and oppression; and we have considered whether the powers now exercised by the police might not be greatly abridged. We have arrived at the conclusion, that considering the extensive jurisdiction of the magistrates, the facilities which exist for the escape of parties concerned in serious crimes, and the necessity for the immediate adoption in many cases of the most prompt and energetic measures, it is requisite to arm the police with some such powers as they now possess; and we have accordingly adopted many of the provisions of the Bengal Code on this head.

In one material point we propose a change in the duties of the police. By the existing law, the darogha or other police officer presiding at an inquiry into a crime committed within his division is required, upon the apprehension of the accused, to "question him fully "regarding the whole of the circumstances of the case, and the persons concerned in the commission of the crime, and, if any property may have been stolen or plundered, the person "in possession of such property, or the place where it has been deposited. In the event of "the accused making free and voluntary confession, it is to be immediately written down." Then follow other provisions for preventing any species of compulsion or maltreatment, with a view to extort a confession or procure information. But we are informed, and this information is corroborated by the evidence we have examined, that, in spite of this qualification as to the character of the confession, confessions are frequently extorted or fabricated. A police officer, on receiving intimation of the occurrence of a dacoity or other offence of a serious character, failing to discover the perpetrators of the offence, often endeavours to secure himself against any charge of supineness or neglect, by getting up a case against parties whose circumstances or characters are such as are likely to obtain credit for an accusation of the kind against them. This is not unfrequently done, by extorting or fabricating false confessions; and when this step is once taken there is of course impunity for the real offenders, and a great encouragement to crime. The darogha is henceforth committed to the direction he has given to the case; and it is his object to prevent a discovery of the truth, and the apprehension of the guilty parties, who, as far as the police are concerned, are now perfectly safe. We are persuaded that any provisions to correct the exercise of this power by the police will be futile; and we accordingly propose to remedy the evil, as far as possible, by the adoption of a rule prohibiting any examination whatever of an accused party by the police, the result of which is to constitute a written document. This of course will not prevent a police officer from receiving any information which any one may voluntarily offer to him; but the police will not be permitted to put upon record any statement made by a party accused of an offence.

It will be seen that we do not propose to extend to Calcutta the rules for regulating preliminary inquiries by the mofussil police. The police of Calcutta do not exercise any judicial functions; and, as the magistrates there are always at hand, the same necessity for investing the police of Calcutta with such powers does not exist as in the case of the police in the more extensive jurisdictions of the mofussil.

CHAPTER VIII.

Of Contempts and Disobedience of Orders.

CVII.

Any Judge, or Court of Justice, or Magistrate shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their offices, and to punish the persons committing them as therein authorized.

Disobedience of orders, &c. under Clause 149 of the Penal Code, how punishable.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.

CVIII.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause.

Contempt of Court under Clause 197.

The offence is that of insulting or interrupting a Court of Justice.

CIX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto.

Contempt of lawful authority under Chapter IX.

Chapter IX. of the Penal Code is entitled "Contempts of the lawful Authority of Public Servants." The rules of this Chapter of the Code of Procedure are confined to Judges, Courts of Justice, and Magistrates; the provisions of Clause 149 and of Chapter IX. of the Penal Code are more general; but it has been considered expedient to leave to the Government of India the extension of these or similar rules to other public servants.

CX.

Provided that no Magistrate or Judge of a Subordinate Criminal Court shall exceed his ordinary powers of punishment in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that where a person has been sentenced to punishment under the provisions of the last preceding article, for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge, Court of Justice, or Magistrate, to remit the punishment, on the submission of the offender to the order or requisition of such Judge, Court of Justice, or Magistrate.

Ordinary powers of punishment not to be exceeded. Punishment may be remitted on submission of the offender.

CHAPTER IX.

Criminal Charges by the Advocate General.

CXI.

It shall be competent to the Advocate General, at his discretion, to file a criminal charge for any offence, in any criminal court; also to withdraw such charge, and to file another.

Advocate General may file criminal charges.

CXII.

To follow the rules relating to charges.

The rules relating to the description of the offence in the case of charges by the Magistrate shall be applicable to criminal charges filed by the Advocate General.

The office of Advocate General, it is assumed, will be retained. The Advocate General is now authorized to exhibit to the Supreme Court criminal informations for breach of the revenue laws, and to file informations *ex-officio* for misdemeanors committed by British subjects more than one hundred miles from the Presidency. We propose to extend the power of the Advocate General, by allowing him to file a criminal information in any criminal Court, whether at Calcutta or in the provinces.

In proposing this extension of the powers of the Advocate General in regard to public prosecutions, we contemplate the appointment, at no distant interval, of a public prosecutor, with deputies, entitled to prosecute for all crimes committed within the limits of the general jurisdiction of the High Court, of whatever magnitude and before whatever Court, and required by virtue of his office to superintend all prosecutions for offences triable by the High Court or the Session Court, from the commencement of the preliminary investigation to the close of the trial. We believe that incalculable benefit would accrue from the appointment of such an officer. It would tend to prevent unfounded prosecutions and collusion of the prosecutor with the accused;—it would produce improvement in the proceedings of the magistrates, which would then be open to the inspection and subject to the advice and control of an officer of great experience, mature judgment, and public responsibility, and thus obviate no inconsiderable portion of the evils now alleged to arise from the appointment of young men to the magistracy;—it would secure regularity and uniformity in the mode of conducting criminal trials;—and it would greatly relieve parties attending as witnesses in the cases of offences triable exclusively by the superior Courts. The appointment of a public prosecutor would enable the government to exercise very extensively the power given to it by Article XIX. of the rules relating to the "Criminal Courts of Original Jurisdiction," to invest any subordinate Court with power to conduct the preliminary inquiry into cases triable by the Session Courts. The cases might then be carried to, and the witnesses required to attend at, the nearest Court, and the proceedings be submitted to the public prosecutor, for his decision as to the propriety of putting the accused upon his trial, instead of the witnesses being sent to the Court of the magistrate, which may be a distance of any number of miles, from one to thirty or more, there to remain until the inquiry is completed and the trial concluded, or to return home when no longer required by the magistrate, and be liable to be immediately summoned to attend the Session Court. It is possible that in making such an appointment as that suggested some difficulty may be experienced in drawing the line between the functions of the public prosecutor and those of the magistrate, so as not to interfere with or weaken the powers of the latter as an officer of police. We, however, entertain little doubt that such an officer might be appointed, and invested with the necessary powers, in such a manner as would be free from all reasonable objection. It would be premature to enter into details upon this point until the recommendation has been considered by the proper authorities.

CHAPTER X.

Prosecutions in certain Cases.

CXIII.

Prosecutions for certain offences not to be instituted but under authority of Government, or of a duly empowered officer.

Charges of offences punishable under Chapters V., VI., XI., and XVI. of the Penal Code shall not be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Governor General in Council, or by order of, or under authority from, a public officer empowered by the Governor General in Council to direct or authorize such prosecution, or unless instituted by the Advocate General.

The offences are as follow :—

Chapter V. Offences against the state;
" VI. Offences relating to the army and navy;
" XI. Offences relating to the revenue;
" XVI. Illegal entrance and residence into the territories of the East India Company.

CXIV.

Prosecution for certain offences under Chapter IX. of the Penal Code not to be instituted but with the sanc-

In cases of contempt of the lawful authority of public servants, and other offences against public servants, as such, described in Chapter IX. of the Penal Code, except the offence described in Clause 186, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the public servants concerned, except when they are inferior ministerial servants, in which

case the prosecution shall not be instituted but with the sanction of their official superiors.

tion of the public servants concerned.

CXV.

In cases of offences against public justice, described in Clauses 190, 191, 192, 193, 194, 195, 196, and 197 of Chapter X. of the Penal Code, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the Court of Justice, Judge, or Magistrate, before which or whom, or against which or whom, such offence was committed.

For certain offences under Chapter X. of the Penal Code, but with the sanction of the authority before which the the offence was committed.

CXVI.

When a Court of Justice, Judge, or Magistrate is of opinion that there is sufficient ground for bringing any person to trial on a charge of any of the offences referred to in the last two preceding articles, the Court, or Judge, or Magistrate, after making such preliminary inquiry as may be necessary, may send the case for investigation to the Magistrate, who shall proceed to inquire into the case, and pass such orders thereon as he may deem proper: Provided, that it shall be competent to the High Court or a Court of Session to charge a person for any such offence committed before it, or under its own cognizance, and to try such person upon its own charge.

Mode of proceeding in cases mentioned in the two last preceding articles.

There are special rules in the Bengal code for bringing before the Sessions Court persons accused of perjury, and subornation of perjury, and forgery, to which, and to certain other offences against public justice, the provisions of Article CXV. refer.

In cases of perjury before the civil courts, whether before a zillah or city court, or a subordinate court, it has been ruled that, under the existing law, the commitment must be made by the civil, that is, the zillah judge, and that the case cannot be tried by him in his capacity of sessions judge, but must be brought before some other judge. When perjury is committed before the Sudder Court the party may be brought to trial upon the order of that court. In perjuries committed before a session judge he may direct the magistrate to commit the party, and may try him upon the magistrates' commitment. The magistrates, however, are not competent to entertain charges of perjury in respect of proceedings had in a civil or criminal court without the direction or sanction of such court.

The law relating to perjury was for many years constructively applied to cases of forgery of documents exhibited in civil and criminal cases; but the principle of prohibiting the magistrates from entertaining charges of perjury, except under the sanction of the court in which such perjury was committed, has been extended positively to cases of forgery by an Act of the Indian legislature, passed in the year 1848.

The same principle pervades the law applicable to cases of perjury in all the Presidencies of India, and its recent extension by the legislature to cases of forgery shows the opinion of the government as to the necessity of its retention. The rule, therefore, has been retained as one called for by the circumstances of the country. The appointment of a public prosecutor intrusted with the general supervision of all prosecutions in the Superior Criminal Courts would admit of the repeal of the existing law on the subject, and transfer to less objectionable hands than those of the Courts of Justice the preferring of criminal charges.

It is proposed by a subsequent rule (Article CCLXXXVII.) to empower session judges to try persons committed by themselves on the civil side of the court.

The principle of the existing rules has been extended by us to the offences punishable under Chapter IX. of the Penal Code, in regard to which the judicial authorities may take one of two courses, viz.: sending them for trial to the magistrate, or punishing them under the provisions of Article CIX.

CHAPTER XI.

Of preliminary Inquiry by the Magistrate in Cases triable by the High Court or Session Court.

Complaint and issuing of Process for causing the Attendance of the Accused.

CXVII.

In all cases where a complaint shall be made before a magistrate having jurisdiction in the case, that any person has committed, or is suspected to have committed, any of the offences specified in Schedule A. as triable exclusively by the High Court or Court of Session, or which in the opinion of the

Magistrate may issue his warrant.

magistrate, is one that ought to be tried by the High Court or Court of Session, it shall be lawful for such magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint; provided also, that in any case which is triable exclusively by the High Court or Court of Session under the provisions of Clauses 3, 4, and 5 of Article X. of the rules relating to the "Criminal Courts of Original Jurisdiction," the magistrate shall proceed in the same manner as if the case had been triable by himself.

May issue a summons instead of a warrant.

In what cases he is to proceed as if the case had been triable by himself.

The rules in Articles CXVII. to CXXVI. inclusive will apply to cases before the magistrates of Calcutta; they may also apply to cases brought before the magistrates in the Mofussil by complaint preferred directly to themselves, instead of to the local police. At Article CXXVII. commence the rules common to all cases triable by the Superior Courts, howsoever brought before the magistrates. The proviso in the latter part of the foregoing Article refers to cases of offences charged against certain public servants, who, from their position, should, we think, be sent for trial before the High Court or Court of Session, but who ought not, on that account, to be deprived of their privilege of being brought before the magistrate by a summons instead of a warrant.

CXVIII.

Postponement of issue of process.

If the magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the magistrate to believe the charge well founded, and the offence be of the nature described in Article CXVII., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

May dismiss the complaint.

CXIX.

Magistrate may direct bail to be taken.

It shall be at the discretion of the magistrate in issuing his warrant for the arrest of any party against whom a complaint has been made, to direct that if such party be willing and ready to give bail in a sum to be fixed by the magistrate for his appearance before the magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release the party from custody. In the event of bail being given, the officer shall forward the recognizance to the magistrate.

CXX.

Magistrate may dispense with the personal attendance of the accused.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

CXXI.

Arrest on warrant indorsed by a magistrate of another district.

Where any such person as is mentioned in Article XXXVIII. or Article XXXIX. shall be apprehended out of the jurisdiction of the magistrate granting the warrant against him, and carried before the magistrate who indorsed such warrant, the magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the magistrate granting the warrant, shall take bail of such person for his appearance before the magistrate granting the warrant, release the person from custody, and forward the recognizance to the magistrate granting the warrant.

CXXII.

Proclamation for an absconding party.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a magistrate he cannot be found, the

magistrate shall, on proof thereof, cause a written proclamation requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he has usually resided. In case the party does not appear, and deliver himself up within the period fixed, it shall be lawful for the magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this Article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual seizure by an officer of the Magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the Magistrate shall deem proper under the circumstances of each Case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Attachment of property.

Property after six months to be at the disposal of Government.

Summoning, &c. of Witnesses.

CXXIII.

The magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons, under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said magistrate, to testify what they know concerning the complaint made against the accused party.

Summons to a witness to attend and give evidence.

CXXIV.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the magistrate to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid; and, if necessary, such warrant may be backed by the magistrate of another district, in order to its being executed out of the jurisdiction of the magistrate who shall have issued the same.

If he do not obey the summons, then warrant.

CXXV.

If the magistrate shall be satisfied by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

In what cases warrant in the first instance.

CXXVI.

If any person so summoned or brought before a magistrate shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the magistrate may, by warrant under his hand and seal, commit the person refusing to custody for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal he may be dealt with according to the provisions of Article CIX. or Article CXVI.

Refusing to answer, may be committed to custody.

Examination of Parties and Evidence.

CXXVII.

Examination of the complainant and witnesses for the prosecution.

When a case is brought before a magistrate in which a person is charged with an offence which is triable exclusively by the High Court or Court of Session, or which, in the opinion of the magistrate, is one that ought to be tried by the High Court or Court of Session, the magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall prevent the magistrate from examining the defendant at any stage of the inquiry, as provided in Article CXXXII.

CXXVIII.

To be in the presence of the defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the defendant, and the defendant shall be permitted to cross-examine them.

CXXIX.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

The rules for recording evidence throughout this code of procedure are taken from an Act on the subject of evidence in Civil Courts, passed by the Indian Legislature in the year 1853.

CXXX.

Magistrate not to receive any written admission or confession of guilt made to the police.

It shall not be competent to the magistrate to receive in evidence against the defendant any written admission or confession of guilt or any statement made by him to the darogha, or other officer of police, and by him reduced into writing.

See Article XCI.

CXXXI.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the last preceding Article shall prevent the magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant.

CXXXII.

Examination of defendant.

It shall be at the discretion of the magistrate to examine the defendant at any stage of the inquiry from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the inquiry is completed, and the defendant either discharged, or committed or held to bail to take his trial before the High Court or the Court of Session, as the case may be.

As already stated, we have proposed a rule to the effect that the party accused of an offence shall not be subjected to any examination by the police. By the regulations of the Bengal Code it is directed that the magistrate shall examine the defendant when brought before him; and under the sanction of this rule it is the practice of the magistrate to examine a prisoner who has confessed to the police, or is likely to give any information in regard to the crime of which he is accused, immediately upon his arrival at the station

of the magistrate, though the prosecutor and his witnesses may not have arrived. The examination is based upon the report of the darogha, and such papers as he may have transmitted with the accused party to the magistrate.

We have considered whether it would not be a better course for the magistrate first to examine the prosecutor and witnesses, and then proceed to the examination of the defendant: and, in order to ascertain the probable effect of prescribing such a course we have examined two gentlemen who long held judicial employ in India. The result of the inquiry is such as to satisfy us that the discretionary power of examination at any stage of the proceedings must be left to the magistrate. The witnesses are of opinion that the immediate examination of the accused is often essential to the discovery of truth, and that the abolition of this power of immediate examination on the part of the magistrate would be attended with injurious consequences to the administration of justice. We accordingly propose to leave this power as it now exists. By the abolition of examination on the part of the police, the first examination of the accused will be transferred from the hands of a functionary whose proceedings in such matters it is often very difficult to control to those of a responsible judicial officer.

We are not unanimous in our decision upon another point, viz.: the latitude which should be allowed to a magistrate as to the questions which he may put to the accused. The danger apprehended from leaving a magistrate without restriction in the exercise of this power is, that in the course of his examination he may become engaged in something like a controversy with the accused, and that the proceeding may thus assume the character of a contest between the two, a result which may give an unfair colour to the evidence obtained, as finally exhibited by the magistrate. It has been suggested, therefore, that limitations, more or less resembling those proposed by Mr. Livingston in his Criminal Code of Louisiana, should be imposed as to the questions which a magistrate may put to the accused. But, upon fully weighing the difficulties on both sides the majority of the Commissioners are of opinion that the advantages of leaving the magistrate without control in this respect outweigh the disadvantages.

CXXXIII.

If the defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

Magistrate how to proceed in case of confession.

CXXXIV.

No influence, by means of any promise or threat, shall be used to any defendant under examination to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

CXXXV.

The examination of the defendant, including every question put to him, and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the defendant refuses to sign, his reason shall be stated in writing as he gives it, at the foot of the examination, and whether the defendant signs it or not the examination shall be attested by the signature of the magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the defendant's statement. No other attestation shall be necessary to render the examination available as evidence at the trial of the defendant, and such attestation shall be admitted without proof of the signature to it, unless the trying Court shall see reason to doubt its genuineness.

Examination of the defendant, how to be recorded.

Examination to be admitted as evidence on the attestation of the magistrate.

The provisions in the regulations of the Bengal Code require confessions to be attested by witnesses, in order to satisfy the Mahomedan law of evidence. The practice is vexatious, and is productive of no advantage to compensate for the inconvenience which attends it. Witnesses are unnecessary for the *verification of the record*. When the committing officer sends up to the trying court the record of a confession given before him, his attestation thereto ought to be received as the best proof of the authenticity of the record. Even now, when witnesses to confessions depose to their authenticity, it is not their evidence which is chiefly relied on by the court, but the attestation of the committing officer. The record is not received as authentic so much because its identity is proved by persons who were casual by-standers when the confession was given by the prisoner, or when it was read over to him, and were called upon to be witnesses when he signed it, but because it bears the attestation of the committing officer. The court indeed would not be less satisfied of the genuineness of the record if there were no witnesses to it.

There remains the question, is it necessary that the *attestation of the committing officer* should be formally proved if witnesses to the confession are dispensed with? All that is really requisite is that the judge shall be satisfied that the signature of the committing

officer is genuine. At present the attestation of the magistrate is not proved at the trial, and yet the courts rely upon it more than upon the evidence of the witnesses to the confession. It appears to be admitted without a doubt of its genuineness, upon the strength of the circumstantial and collateral evidence with which it is accompanied, upon the same evidence by which the judge is satisfied that the record of the prisoner's commitment is genuine, and feels himself warranted in acting upon it.

We are of opinion that there is no necessity for summoning witnesses for the purpose of proving either the authenticity of a prisoner's confession, or the attestation of the committing officer. The rule of this article accordingly dispenses with such evidence, but leaves it open to the court to require it, if it sees any reason to doubt the genuineness of the attestation.

CXXXVI.

Defendant may be detained for any offence committed by him.

The defendant, on examination, may be committed or held to bail by the magistrate for any offence which from the evidence he may appear to have committed.

CXXXVII.

Any person attending may be detained for any offence committed by him.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the magistrate for the purpose of examination, for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made.

CXXXVIII.

Discretionary with the magistrate to take evidence for the defence.

It shall be at the discretion of the magistrate to summon and examine any evidence that may be offered in behalf of the defendant to answer or disprove the evidence against him.

By the existing law of the Bengal Code, the committing officer has a discretion to take evidence on behalf of the accused. There may be cases in which to take the evidence offered by the defendant would be merely to anticipate the trial, while in others it may be required to prevent the unnecessary commitment of the accused. It is therefore proposed to retain the rule in its present form.

CXXXIX.

Witnesses for the defence.

The provisions of articles CXXIV., CXXV., CXXVI., and CXXIX. shall be applicable to witnesses named in support of the defence.

Conditional Pardon.

CXL.

Magistrate may tender a pardon in certain cases.

In cases of murder, dakoity, robbery, thuggee, offences relating to coin, and forgery, as well as in cases of housebreaking and theft, attended with circumstances of aggravation, it shall be lawful for the magistrate, recording his reasons for the same, to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, on condition of their making a full, true, and fair disclosure of the whole of the circumstances within their knowledge relative to the crime committed, and the persons concerned in the perpetration thereof, or of their pointing out (in cases of robbery and theft) the mode in which the stolen property may have been disposed of.

CXLI.

When High Court or Session Court may direct the commitment of a person to whom a pardon may have been tendered.

It shall be competent to the High Court as a Court of original jurisdiction, to the Session Court, or to the High Court as a Court of reference, to direct the commitment of any person to whom a pardon may have been offered under the provisions of the last preceding article, should it appear that such person has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information.

CXLII.

When High Court or Session Court

In like manner it shall be competent to the High Court as a Court of original jurisdiction, or to a Session Court, at the time of trial, and also to the High

Court as a Court of reference, to instruct the magistrate to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, with the view of obtaining his or their evidence on the trial. may direct a tender of pardon.

CXLIII.

It shall be competent to the High Court to revise the proceedings of the magistrates, in any case in which a pardon may have been tendered to any person, and to annul the orders passed on such proceedings, should it appear to the High Court that a pardon had been granted on insufficient grounds. High Court may revise proceedings when a pardon may have been tendered.

The above are taken from existing provisions in the Bengal Code.

Bail.

CXLIV.

Where any person shall appear or be brought before a magistrate accused of any of the offences entered as not bailable in Schedule A. of this Code of Procedure, such person shall not be admitted to bail, provided that there appear reasonable grounds for believing that he has been guilty of the crime imputed to him; but if the evidence given in support of the accusation shall, in the opinion of the magistrate, not be such as to raise a strong presumption of the guilt of the person accused and to require his committal, or such evidence shall be adduced on behalf of the person accused as shall, in the opinion of the magistrate, weaken the presumption of his guilt, but there shall appear to the magistrate in either of such cases to be sufficient ground for judicial inquiry into his guilt, the person accused shall be admitted to bail. Bail not to be taken for certain offences if proof of guilt. When may be taken.

CXLV.

Where any person shall appear or be brought before a magistrate accused of any of the offences entered as bailable in Schedule A. of this Code of Procedure, he shall at once be admitted to bail. When bail shall be taken.

CXLVI.

Where a magistrate shall admit any person accused of any offence, or on suspicion thereof, to bail, a recognizance in such sum of money as the magistrate shall think sufficient is to be entered into by the person so accused, and one or more sureties conditioned that such person shall attend during the preliminary inquiry, and, if required, shall appear at the then next session of the High Court or the Session Court, as the case may be, to answer the charge. Recognizance of accused and sureties.

CXLVII.

If through mistake or fraud insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused may be ordered by the magistrate to find sufficient sureties, and in default may be committed to prison. Insufficient bail.

CXLVIII.

If the accused cannot presently find sureties, he shall be admitted to bail upon his doing so at any time afterwards before conviction. Bail may be taken any time before conviction.

CXLIX.

After the recognizances shall have been duly entered into, the magistrate, in case the accused shall have appeared voluntarily, or shall be in the custody of some officer, shall thereupon discharge him; and in case he shall be in some prison or other place of confinement, shall issue a warrant of discharge to the gaoler or other person having him in his custody, who shall thereupon liberate him. Discharge on bail.

CL.

How persons who have bailed may discharge themselves.

Those who may have become bail for any person may discharge themselves by taking him and surrendering him before the Court by which he has been bailed, and he may thereupon be committed to prison by the said Court.

CLI.

New sureties.

In such case it shall be competent to such defendant to find new sureties.

CLII.

Proceedings to compel payment of penalty by accused.

Whenever by reason of default of appearance of the party executing the personal recognizance the magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty in the mode prescribed for the satisfaction of decrees of the Civil Court.

CLIII.

Proceedings to compel payment of penalty by sureties.

Whenever by reason of default of appearance by the party bailed the magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid; and, if no sufficient cause shall be shown, the magistrate shall proceed to recover the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court, and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the Civil gaol, during a period not exceeding six months.

Warrant of Commitment.

CLIV.

Warrant of commitment, how to be directed, &c.

Every warrant of commitment shall be directed to some gaoler, keeper, or other officer or person having authority to receive and keep prisoners, either by his name or official description, and shall command the person to whom it is so directed to receive the prisoner and keep him until he be discharged in due course of law.

CLV.

Warrant, what to contain.

The warrant (which must be drawn up before the party is sent to prison) shall set forth the name of the defendant in full, if known; but if it be not known, then a description of his person, stating the refusal to tell his name; and shall state in substance the offence in respect of which the prisoner is charged, the authority of the committing officer, and the place of imprisonment.

CLVI.

With whom to be lodged.

The warrant of commitment shall be lodged with the gaoler, if he be in the gaol; and if he be not, with his deputy; and if he has no deputy, it may be lodged with any officer of the gaol then being in the gaol.

Adjournment.

CLVII.

When magistrate may adjourn the inquiry.

If from the absence of witnesses or from any other reasonable cause, it shall become necessary or advisable to defer the examination, or further examination, of witnesses for any time, it shall be lawful for the magistrate, by a

written order, from time to time to adjourn the inquiry, and to remand the person accused for such time as shall be deemed reasonable, not exceeding fifteen days; provided that the magistrate may order such accused person to be brought before him at any time before the expiration of the time for which such accused person shall be so remanded, and the gaoler or other officer in whose custody he shall then be shall duly obey such order; provided also, that, instead of detaining the accused person in custody during the period for which he shall be so remanded, the magistrate may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such magistrate, conditioned for his appearance at the time and place appointed for the continuance of such examination.

Discharge of the Defendant.

CLVIII.

When a magistrate finds that there are not sufficient grounds for putting the defendant on his trial on a formal charge, or for remanding him, he shall discharge him. When defendant to be discharged.

Commitment, &c. of the Defendant for Trial.

CLIX.

The defendant shall be sent for trial by a magistrate of Calcutta before the High Court, and by a magistrate of a Zillah before the Session Court, when evidence has been given before the magistrate which appears to be sufficient to convict the defendant of an offence which is triable exclusively by the High Court or the Court of Session, or which, in the opinion of the magistrate, is one that ought to be tried by the High Court or the Court of Session. When defendanr to be committed for trial.

CLX.

As soon as the charge on which the defendant is to be tried has been prepared it shall be read to the defendant, and a copy or translation of it shall be furnished to him. The defendant shall then be at liberty to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the High Court or the Session Court, as the case may be. The magistrate shall receive the list, and summon the witnesses to appear before the Court before which the defendant is to be tried. This, however, shall not prevent a person committed from giving in a further list of witnesses, and having them summoned at any time between the commitment and the trial. The provisions of Articles CXXIV. and CXXV., so far as they relate to the compulsory attendance of witnesses, shall be applicable to witnesses named by the defendant in the lists above mentioned. Copy of charge to be furnished to defendant. Witnesses for the defence on the trial.

CLXI.

When the preliminary inquiry is concluded the defendant shall be entitled to copies of the depositions on the record of the same without delay, if he demands them a reasonable time before the trial. Copies of depositions to be furnished to defendant.

CLXII.

Upon the commitment of the defendant to take his trial before the High Court or the Court of Session, as the case may be, the magistrate shall issue a warrant of commitment, stating the offence in the same form as the charge. Warrant of commitment.

CHAPTER XII.

ON THE CHARGE.

CLXIII.

What the charge is to contain.

When the magistrate has resolved to send the defendant before the High Court or Court of Session for trial, or put him on his trial before himself for any offence punishable under the Penal Code with imprisonment for a period exceeding six months, he shall make a written instrument under his hand and seal, declaring with what offence the defendant is charged, and within the cognizance of what Court the offence is, and shall direct that the defendant be tried by the said Court on the said charge. In all cases sent for trial to the High Court or Court of Session the magistrate shall send a copy of this instrument, with the proceedings, to the public prosecutor, where such officer has been appointed, otherwise to the Court before which the defendant is to be tried.

CLXIV.

How the offence is to be described.

The charge shall describe the imputed offence as nearly as possible in the language of the clause of The Penal Code under which such offence is punishable, and shall refer to such clause by the number of the clause.

CLXV.

Absence of General Exceptions under the Penal Code to be assumed.

It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the General Exceptions contained in the third chapter of The Penal Code, but every charge shall be understood to assume the absence of all such circumstances.

CLXVI.

Evidence as to General Exceptions.

It shall not be necessary at the trial, on the part of the prosecutor, to prove the absence of such circumstances in the first instance; but the defendant shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may be given on the part of the prosecutor.

CLXVII.

Clause of the Penal Code containing an exception, not a General Exception.

Where the clause itself referred to in the charge contains an exception, not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting such exception so contained in the clause, without a distinct denial of the existence of such circumstances.

CLXVIII.

The charge may contain one or more heads.

Charges containing One Head.

CLXIX.

Heads of charge.

Where a charge contains one head only, the form shall be as follows, or to the same effect:

Forms of Charge.

(*a*) I, A. [*name and office of magistrate, &c.*], declare that there is hereby made against Z. the charge:

On clause 109.

(*b*) That he has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th clause of The Penal Code, (*c*) and within the cognizance of the [*style of the Court*].

(*d*) And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the magistrate.*]

Where the magistrate tries the case, there must be substituted for (*c*):
within my cognizance; and *the words* "by the said Court" *in* (*d*) *may be omitted.*

To be substituted for (*b*).

On clause 112 applied to clauses 111 and 319.

2. That he has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th clause of The Penal Code, and, by committing such offence, has also committed an offence punishable under the 319th clause of The Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has, by reason of the premises, become liable to cumulative punishment under the 112th clause of The Penal Code.

On clause 129.

3. That he has committed the offence of rioting, and has thereby committed an offence punishable under the 129th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 138.

4. That he has, being a public servant, directly accepted from a party, for another party, a gratification, other than legal remuneration, as a motive for his, the said Z.'s, forbearing to do an official act, and has thereby committed an offence punishable under the 138th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 303.

5. That he has committed voluntary culpable homicide in defence, and has thereby committed an offence punishable under the 303d clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 306.

6. That he has previously abetted by aid the commission of suicide by a person in a state of intoxication, and has thereby committed an offence punishable under the 306th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 308.

7. That he has omitted what he was legally bound to do, with such knowledge and under such circumstances that, if he by that omission had caused death, he would have been guilty of murder, and has carried that omission to such a length as, at the time of carrying it to that length, he contemplated as sufficient to cause death, and has thereby committed an offence punishable under the 308th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 319.

8. That he has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 319th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 377.

9. That he has committed robbery, and has thereby committed an offence punishable under the 377th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 379.

10. That he has committed dakoity, and has thereby committed an offence punishable under the 379th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 388.

11. That he, being a public servant in the post office department, and being, as such, intrusted with the keeping of a packet, has committed criminal breach of trust by misappropriating a thing contained in such packet, and has thereby committed an offence punishable under the 388th article of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 435.

12. That he has committed lurking house trespass by night, and has thereby committed an offence punishable under the 435th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 436 applied to clauses 364 and 435.

13. That he has committed lurking house trespass by night, being an offence punishable under the 435th clause of the Penal Code, in order to the committing of theft, and has actually committed such theft, being an offence punishable under the 364th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has by reason of the

premises become liable to cumulative punishment under the 136th clause of the Penal Code.

And the same form shall be followed, as nearly as may be, in charges with one head only, upon other clauses of The Penal Code.

Charges containing Two or more Heads.

CLXX.

Charge in cases falling within two or more clauses of the Penal Code.

When it appears to the magistrate that the facts which can be established in evidence show a case falling within two or more clauses of The Penal Code, the charge shall contain two or more heads, each of which shall be applicable to one of such clauses.

CLXXI.

Two or more offences punishable under the same clause.

When it appears to the magistrate that the facts which can be established in evidence show the commission of two or more offences punishable under the same clause of The Penal Code, the charge shall contain two or more heads charging such offences respectively.

CLXXII.

Cases of doubt as to the clause which is applicable, or the offence which may be proved.

When it appears to the magistrate that the facts which can be established in evidence show a case within some one of two or more clauses of The Penal Code, but it is doubtful which of such clauses will be applicable, or show the commission of one of two or more offences punishable under the same clause of The Penal Code, but it is doubtful which of such offences will be proved to have been committed, the charge shall contain two or more heads, framed respectively on each of such clauses, or charging respectively each of such offences, accordingly.

CLXXIII.

Form of charge of more than one head.

When a charge contains more heads than one, the form shall be as follows, or to the same effect:

Forms of Charge.

I, A. [*name and office of magistrate, &c.*] declare, that there is hereby made against Z. the charge:

On clauses 242, 243.

First: That he has, knowing a coin to be counterfeit, delivered the same to another person as genuine, and has thereby committed an offence punishable under the 242d clause of The Penal Code, and within the cognizance of the [*style of the Court*].

Secondly: That he has, knowing a coin to be counterfeit, attempted to induce another person to receive it as genuine, and has thereby committed an offence punishable under the 242d clause of The Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and intending that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of The Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and knowing it to be likely that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of The Penal Code, and within the cognizance of the [*style of the Court*].

And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the magistrate, &c.*]

First: That he has committed murder, and has thereby committed an offence punishable under the 300th clause of The Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 300, 301.

Secondly: That he has committed manslaughter, and has thereby committed an offence punishable under the 301st clause of The Penal Code, and within the cognizance of the [*style of the Court*].

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of The Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 364, 367

Secondly: That he has committed theft, having made preparation for causing death to a person in order to the committing of such theft, and has thereby committed an offence punishable under the 367th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has committed theft, having made preparation for causing restraint to a person in order to retiring after the committing of such theft, and has thereby committed an offence punishable under the 367th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and has thereby committed an offence punishable under the 367th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of The Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 364, 387.

Secondly: That he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

And the same shall be followed, as nearly as may be, in charges with more heads than one, upon other clauses of The Penal Code.

CLXXIV.

It shall be competent to the Court, at any stage of a trial, to amend or alter the charge against a defendant. Amendment of charge.

CLXXV.

If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the defendant in his defence, it shall be at the discretion of the Court, after making the amendment or alteration, to proceed with the trial as if the amended charge had been the original charge. When the trial may be immediately proceeded with after amendment.

CLXXVI.

If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the defendant in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the defendant to make his defence to the amended or altered charge; and after hearing his defence, may further adjourn the trial to admit of the appearance of any witnesses whose evidence the Court may consider to be material to the case, or whom the defendant may wish to be summoned in his defence. If after the reading of the amended or altered charge to the defendant no postponement is desired by the defendant, or considered necessary by the Court, the Court may at once proceed with the trial. When a new trial may be ordered, or trial suspended.

CLXXVII.

In all cases of amendment or alteration of a charge, the defendant shall be allowed to recal and cross-examine any witness that may have been examined for the prosecution. Defendant may recal and cross-examine witnesses for prosecution.

The preliminary inquiry having been terminated, the next point to be considered is, in what shape the accusation should be presented for trial. The duty of preparing the charge seems most fitly to devolve upon the magistrate who conducts the preliminary inquiry; his functions in this respect will correspond to that of settling the issues in civil cases. The result of this in England is what is called the indictment; in our system it is what we call the charge. We consider that the charge should refer to the clause in the Penal Code by which the offence is made punishable; and that the accused should be furnished with a copy of the evidence taken on the preliminary inquiry. But a difference of opinion exists among us, as to the particularity which ought to be required in the description of the offence.

On one hand, it is said that a want of fulness in the specification of times, persons, places, &c., puts the party charged under the disadvantage of having to meet an accusation which he has not the means of anticipating. As to this, the majority of the Commission consider that the preliminary inquiry before the magistrate will furnish the party charged with the knowledge of the facts which are to be proved in support of the charge. If the proof given at the trial vary from that which has been given in the preliminary inquiry to an extent essentially prejudicial to the defence, the Court will postpone the trial under the rules of procedure which give it that power. And no particularity of statement stopping much short of a full repetition of the evidence given at the preliminary inquiry can absolutely secure a defendant against the danger that evidence may be given at the trial in some degree varying from that given on the preliminary inquiry. We cannot recommend the adoption of the old English rules of criminal pleading, under which it was required to allege numerous particulars, the non-proof or even disproof of which did not affect the verdict. Nor again, could it be made consistent with the ends of justice, to require that allegations of extreme particularity should be inserted in the charge, and that a failure in proof of these should produce an acquittal.

It may also be said that particularity in the charge is necessary for the purpose of enabling the accused party to avail himself, if a second time subjected to the same charge, of the fact of a previous trial. But, on such second inquiry, evidence of the identity of the facts, independently of the indictment, is always necessary; and the proofs given on the preliminary inquiry and at the trial will be sufficient to insure the protection required; or, if they are deficient in this respect, the particularity in the charge would not supply the deficiency.

On the other hand, it may be objected that no charge is necessary at all, if the above arguments be sound. There is, however, another point upon which the accused party ought to be informed. Assuming that he knows all the facts to be insisted upon, he ought further to know what is the crime which these facts are said to show. For this purpose, a specification of his offence in the terms of the Penal Code seems to the majority of the Commission to be useful and sufficient.

In order to carry this into effect, we have suggested some precedents; and in doing so have selected three classes of cases: first, some simple cases; secondly, cases in which the offence charged is named in the code, and has a complicated or multifarious definition; thirdly, cases in which the description of the offence in the clause prescribing the punishment is complicated, and the offence cannot, even by assuming all definitions to be known, be designated by a name, or shortly described in the charge. The object has been to select the cases most fit for testing the expediency of the method.

In this last class the strongest instance is the charge framed under the 308th clause of the Penal Code. It will be seen that it is very complicated, and that terms of the utmost generality are used. But this seems to be the consequence of the enactment itself. Supposing the preliminary inquiry to furnish evidence that an offence within the 308th clause has been committed, it appears to be unfair to leave the accused without any notice of the mode in which the facts are insisted upon as constituting a legal offence. If the charge itself should specify the facts more minutely, but it should not be held necessary to prove them as specified, the prisoner, at the best, gains nothing by the specification; if it should be held that such proof is necessary, there will be great danger that justice will be defeated by immaterial variances.

It should be observed that, where clauses of the Penal Code contain mere definitions, the definition is not inserted in the charge, nor is reference made to the defining clauses. The charge is of the defined offence; and the reference is only to the clause imposing the punishment. This undoubtedly leaves open some latitude of proof, inasmuch as an offence is very frequently defined as capable of being committed in several different ways. But we do not think that injustice or inconvenience will result from allowing latitude of proof to this extent. The prisoner is, in effect, told that the facts of which evidence has been prepared against him, and of which he is aware, bring the charge against him within the head of the offence which is the subject of the clause named. The Code furnishes the cases falling under this head; and it seems that this, joined with the knowledge of the facts, is sufficient to secure the accused from any unfair surprise.

We have found it necessary to entrust the Court which tries the charge with large powers of amendment. No very definite rules can, as we believe, be laid down on this head. All that seems practicable is, to indicate in general language the principles which the Judge is to keep in view in the exercise of his discretion. In connexion with the subject of amendment we have to consider the question: Whether, when the Judge has amended the charge, the evidence already taken is to be considered as applicable to the amended charge, or the proof ought to begin de novo. When an amendment is made in an English Criminal Court, the trial goes on as if the indictment had originally stood as amended. We have come to the conclusion that the same method should be adopted in our system in ordinary cases, and that it is not necessary to require that the evidence, after the amendment, shall commence *de novo*. Such a proceeding would in almost every case produce a mere formal repetition of what has already taken place; and we have therefore considered it sufficient to entrust the Court with large powers either to direct a new trial, or to adjourn the trial, in order to receive the prisoner's defence to the amended charge, and to call for any further evidence that may be considered necessary; allowing the prisoner also to recal and cross-examine the

witnesses for the prosecution. We trust, however, that, as the charges will be framed under the proposed system, the occasion for amending in matters of mere form will rarely or never arise.

In cases tried before a magistrate in which a warrant may issue upon complaint, the charge will be drawn up by the magistrate in the same way as when he commits for trial by the High Court or Sessions Court (Article CCIII.). The magistrate will not hear the evidence twice; this amounts, in effect, to drawing up the charge at the close of the evidence for the prosecution. The defendant will then plead to the charge, and will be at liberty to recal and cross-examine the witnesses for the prosecution, as well as to require the production of any evidence that may be indicated by him to disprove the evidence against him.

Cases which the magistrate tries upon mere summons, without issuing a warrant, are not generally of such importance as to require the formal preparation of a charge and a plea thereto by the defendant (Articles CCXXII. and CCXXIII.). We have therefore considered that the regularity of the proceedings is sufficiently secured by requiring that the magistrate, in the event of conviction, shall, as well in this class of cases as in those in which a warrant may issue upon complaint, draw up a formal conviction (Article CCCXIII.). We have, however, left it open to the magistrate to proceed, where he deems it expedient, in the more formal mode prescribed for cases when a warrant has issued upon complaint (Article CCXXVI.).

CHAPTER XIII.

Of Offences triable by the Magistrate.

Cases in which a Warrant on Complaint may issue against the Defendant.

Complaint and issuing of Process for causing the Attendance of the Accused.

CLXXVIII.

In all cases where a complaint shall be made before a magistrate having jurisdiction in the case that any person has committed, or is suspected to have committed, any offence triable by such magistrate, and which is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint. *Cases in which magistrate may issue a warrant.* *Summons instead of warrant.*

The rules in Articles CLXXVIII. to CLXXXVII. inclusive will apply to cases before the magistrates of Calcutta; they may also apply to cases brought before the magistrates in the Mofussil by complaint preferred directly to themselves, instead of to the local police. At Article CLXXXVIII. commence the rules common to cases triable by the magistrates, howsoever brought before them.

CLXXIX.

If the magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the magistrate to believe the charge well founded, and the offence be of the nature described in Article CLXXVIII., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it. *Postponement of issue of process.*

CLXXX.

It shall be at the discretion of the magistrate, in issuing his warrant for the arrest of any person against whom a complaint has been made, to direct that if such person be willing and ready to give bail in a sum to be fixed by the magistrate for his appearance before the magistrate on a specified day to answer *Magistrate may direct bail to be taken.*

the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release such person from custody. In the event of bail being given, the officer shall forward the recognizance to the magistrate.

CLXXXI.

Magistrate may dispense with personal attendance of accused.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

CLXXXII.

Arrest on warrant indorsed by a magistrate of another district.

Where any such person as is mentioned in Article XXXVIII. or Article XXXIX. shall be apprehended out of the jurisdiction of the magistrate granting the warrant against him, and carried before the magistrate who indorsed such warrant, the magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the magistrate granting the warrant, shall take bail of such person for his appearance before the magistrate granting the warrant, release the person from custody, and forward the recognizance to the magistrate granting the warrant.

CLXXXIII.

Proclamation for an absconding party.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a magistrate he cannot be found, the magistrate shall, on proof thereof, cause a written proclamation requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he has usually resided. In case the party does not appear, and deliver himself up within the period fixed, it shall be lawful for the magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual seizure by an officer of the magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the magistrate shall deem proper under the circumstances of each case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Attachment of property.

Property after six months to be at the disposal of Government.

Summoning, &c. of Witnesses.

CLXXXIV.

Summons to a witness to attend and give evidence.

The magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said magistrate, to testify what they know concerning the complaint made against the accused party.

CLXXXV.

If he do not obey the summons, then warrant.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered

for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the magistrate to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid; and, if necessary, such warrant may be backed by the magistrate of another district, in order to its being executed out of the jurisdiction of the magistrate who shall have issued the same.

CLXXXVI.

In what cases warrant in the first instance.

If the magistrate shall be satisfied by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

CLXXXVII.

Refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the magistrate may, by warrant under his hand and seal, commit such witness to custody for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI.

Examination of Parties and Evidence.

CLXXXVIII.

Examination of the complainant and witnesses for the prosecution.

When any such case, as referred to in Article CLXXVIII., is brought before a magistrate, the magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall prevent the magistrate from examining the defendant at any stage of the proceedings, as provided in Article CXCIV.

CLXXXIX.

To be in the presence of the defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the defendant, and the defendant shall be permitted to cross-examine them.

CXC.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the magistrate upon the objection. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

The clause in this article relating to the record of objections is additional to the corresponding rule of Article CXXIX., with reference to the appeal from the magistrate's final decision in the case.

CXCI.

Magistrate not to receive written confession of guilt made to the police.

It shall not be competent to the magistrate to receive in evidence against the defendant any written admission or confession of guilt or any statement made by him to the darogha, or other officer of police, and by him reduced into writing.

See Article XCI.

CXCII.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the last preceding Article shall prevent the magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

CXCIII.

May summon necessary witnesses at any stage of the proceedings.

It shall be at the discretion of the magistrate, at any stage of the proceedings to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

CXCIV.

Examination of defendant.

It shall be at the discretion of the magistrate to examine the defendant at any stage of the proceedings, from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the proceedings are completed and judgment pronounced.

CXCV.

Magistrate how to proceed in case of confession.

If the defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

CXCVI.

No influence to be used to induce disclosures.

No influence, by means of any promise or threat, shall be used to any defendant under examination, to induce him to disclose or withhold any matter within his knowledge.

CXCVII.

Examination of the defendant how to be recorded.

The examination of the defendant, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the defendant refuses to sign, his reason shall be stated in writing, as he gives it, at the foot of the examination; and, whether the defendant signs it or not, the examination shall be attested by the signature of the magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the defendant's statement.

CXCVIII.

Defendant may be detained for any offence committed by him.

The defendant, on examination, may be committed or held to bail by the magistrate for any offence which from the evidence he may appear to have committed.

CXCIX.

Any person attending may be

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the magistrate for the purpose of

examination for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made. detained for any offence committed by him.

Bail and Warrant of Commitment.

CC.

The provisions of Articles CXLIV. to CLVI. inclusive shall be applicable to cases triable by the magistrate under the rules contained in this section. Application of previous rules.

Adjournment.

CCI.

The provisions of Article CLVII. shall be applicable to cases triable by the magistrate under the rules of this section. Application of previous rules.

Discharge of the Defendant.

CCII.

When a magistrate finds that there are not sufficient grounds for putting the defendant on his trial on a formal charge, or for remanding him, he shall discharge him. When defendant to be discharged.

Charge, Plea, and Defence.

CCIII.

When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the defendant as the magistrate may consider necessary, have been taken, the magistrate shall consider whether any and what offence is *primâ facie* proved against the defendant, and if he finds that an offence is apparently proved against the defendant which falls within the definition in a certain clause of the Penal Code, or within one or other of the definitions in several clauses of the code, he shall prepare in writing a charge against the defendant in the manner prescribed in Chapter XII. of this Code of Procedure. Charge.

CCIV.

The charge shall then be read to the defendant, and he shall be asked whether he be guilty or not guilty of the offence charged. Plea.

CCV.

If the defendant plead "guilty," the magistrate shall explain to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the defendant comprehends the nature of the charge, and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon. Plea of "guilty."

CCVI.

If the defendant plead "not guilty" to the charge, he shall be called upon to enter upon his defence, and to produce his evidence, if in attendance, and shall be allowed to recal and cross-examine the witnesses for the prosecution. Plea of "not guilty."

CCVII.

The magistrate shall summon any witness, and examine any evidence, that may be offered in behalf of the defendant, to answer or disprove the evidence against him, and may, for this purpose, at his discretion, adjourn the trial to such future time as may be necessary, and so from time to time. Evidence for the defence.

CCVIII.

Witnesses for the defence.

The provisions of Articles CLXXXV., CLXXXVI., CLXXXVII., and CXC. shall be applicable to witnesses named in support of the defence.

CCIX.

Conviction.

If the defendant is convicted, the magistrate shall pass sentence upon him according to law.

CCX.

How the magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

In any trial before a magistrate, wherein it may appear, at any stage of the proceedings, that either from the value of the property exceeding the pecuniary limit assigned to the magistrate, or other cause, the case is one which the magistrate is not competent to try, the magistrate shall stop further proceedings under this Chapter, and shall proceed in accordance with the rules of Chapter XI. for conducting preliminary investigations in cases triable by the High Court or Session Court; and if the accused have been called upon to plead to a charge or charges prepared by the magistrate, such charge or charges, and the proceedings consequent thereon, shall be held to be null and void.

CHAPTER XIV.

OF OFFENCES TRIABLE BY THE MAGISTRATES.

CASES in which a Summons on Complaint shall issue to the Defendant.

Complaint and issuing of Process for causing the Attendance of the Accused.

CCXI.

Summons shall issue.

In all cases where a complaint shall be made before a magistrate, having jurisdiction in the case, that any person has committed or is suspected to have committed any offence other than the offences provided for in Chapter XIII. of this Code of Procedure, for which he is liable, upon a summary conviction for the same before a magistrate, to be imprisoned or fined, or otherwise punished, it shall be lawful for such magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before such magistrate, to answer to the said complaint; provided that if the magistrate shall be satisfied by evidence before him that the accused is about to abscond, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance for the arrest of the accused.

When warrant may issue.

CCXII.

Service of summons.

Every such summons shall be served upon the person to whom it is so directed, by delivering the same to such person, or by leaving the same with some adult member of his family; and the proper officer shall certify the service of the said summons.

CCXIII.

When magistrate may refuse summons.

Provided that, before issuing the summons to the accused party it shall be competent to the magistrate to examine the complainant as to the specific facts of the case, and if upon such examination it shall appear to the magistrate that there is no sufficient ground for summoning the accused, he may refuse the summons.

CCXIV.

If summons be not obeyed, warrant.

If the person served with a summons as provided in Article CCXII. shall not be and appear before the magistrate at the time and place mentioned in such summons, and it shall be made to appear to the magistrate that such

summons was so served in what shall be deemed by the magistrate to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such magistrate, if he shall think fit, upon declaration being made before him substantiating the matter of such complaint to his satisfaction, to issue his warrant to apprehend the person so summoned, and to bring him before such magistrate to answer to the said complaint.

CCXV.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party. Magistrate may dispense with personal attendance of accused.

Summoning, &c. of Witnesses.

CCXVI.

If it shall be made to appear to the magistrate that any person is likely to give material evidence in behalf of the complainant or defendant in any case which may be tried according to the rules of this Chapter, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such complaint, such magistrate shall issue his summons to such person under his hand and seal, requiring him to appear at a time and place mentioned in the summons, before the said magistrate, to testify what he knows concerning the matter of the said complaint. Summons to witness to attend and give evidence.

CCXVII.

It shall be lawful for the magistrate to direct that before any process is issued for the attendance of witnesses in cases under this Chapter, the person preferring the charge shall deposit in the hands of the proper officer a sufficient sum for the maintenance of the witnesses who may be summoned on his application, during their attendance at the magistrate's Court, and the magistrate shall regulate the amount of diet money so required, with reference to the probable period such witnesses may have to be in attendance, and in the event of the prolonged detention of witnesses, shall direct the deposit of any further sum which to the said magistrate may seem requisite. Diet money for witnesses.

CCXVIII.

It shall be at the discretion of the magistrate, at any stage of the trial, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case. Magistrate may summon necessary evidence.

CCXIX.

The provisions of Articles CLXXXV., CLXXXVI., and CLXXXVII. shall be applicable to witnesses summoned according to the provisions of Articles CCXVI. and CCXVIII. Application of previous rules.

Bail.

CCXX.

If upon the day and at the place appointed the defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the magistrate by virtue of any warrant, it shall be at the discretion of the magistrate to admit the defendant to bail, or allow him to be at large upon his personal recognizance. If he cannot give bail, when required to do so, he shall be committed to custody. In cases in which the order of the magistrate shall direct that the defendant be admitted to bail, the provisions of Articles CXLIV. to CLIII. inclusive shall be applicable to cases tried according to the provisions of this Chapter. Defendant may be admitted to bail or to be at large upon personal recognizance.

Appearance, Examination of Parties, and Evidence.

CCXXI.

Nonappearance of complainant.

If upon the day appointed for the appearance of the defendant, or any day subsequent thereto, on which the case may be called on, the complainant does not appear, the magistrate shall dismiss the complaint; unless for some reason he shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he shall think fit.

CCXXII.

Admission by defendant of truth of complaint.

On the appearance of both parties for the hearing of the case, the substance of the complaint shall be stated to the defendant, and he shall be asked if he have any cause to show why he should not be convicted; and if he thereupon admit the truth of such complaint, and show no cause, or no sufficient cause, why he should not be convicted, then the magistrate may convict him accordingly.

CCXXIII.

Proceeding when no such admission is made.

If the defendant do not admit the truth of the complaint, then the magistrate shall proceed to hear the complainant, and such witnesses as he may examine in support of his complaint, and also to hear the defendant and such witnesses as he may examine in his defence; and having heard the parties and their witnesses, shall consider the whole matter and determine the same, and shall convict the defendant or dismiss the complaint, as the case may be.

CCXXIV.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the magistrate upon the objection. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CCXXV.

Adjournment.

Before or during the hearing of any complaint, it shall be lawful for the magistrate to adjourn the hearing of the same to a future day, to be then appointed and stated in the presence and hearing of the party or parties; and if on the day to which such hearing or such further hearing shall be so adjourned, the defendant shall not appear, the magistrate may issue his warrant for the arrest of such defendant, and if the complainant shall not appear, the magistrate may dismiss such complaint.

CCXXVI.

Formal charge may be prepared.

It shall be at the discretion of the magistrate, in the trial of any case in which a summons on complaint shall issue to the defendant, to follow the rules of procedure prescribed in Chapter XII. for the preferring of criminal charges, and in Articles CCIII. to CCVIII. inclusive, for the trial of such charges.

CCXXVII.

Conviction.

If the defendant is convicted, the magistrate shall pass sentence upon him according to law.

Costs.

CCXXVIII.

In all cases of summary conviction under this chapter, it shall be lawful for the magistrate making the same, in his discretion, to award that the defendant shall pay to the complainant such costs as to such magistrate shall seem just and reasonable; and in cases where such magistrate, instead of convicting as aforesaid, shall dismiss the complaint, it shall be lawful for him, in his discretion, in and by his order of dismissal, to award and order that the complainant shall pay to the defendant such costs as to such magistrate shall seem just and reasonable; and the sums so allowed for costs shall always be specified in such conviction, or order of dismissal aforesaid, and shall be recoverable by distress and sale of the goods and chattels of the party, and, in default of such distress, by imprisonment, without labour, in the gaol for the confinement of debtors, for any time not exceeding one calendar month, unless such costs shall be sooner paid. Magistrate may award costs.

CHAPTER XV.

Of Inquiries and Trials before the Subordinate Criminal Courts.

CCXXIX.

Criminal cases shall be brought before the Subordinate Criminal Courts by reference by the magistrate. It shall, however, be at the discretion of the Government, respect being had to the public convenience, to authorize a Subordinate Criminal Court also to receive such cases on complaint preferred directly to such Court, or on the report of a police officer. How cases are to be brought before Subordinate Criminal Courts.

Cases are now brought before the Subordinate Criminal Courts by reference by the magistrate. We propose to give to the Government a discretionary power of authorizing any Criminal Court to receive cases, within its competence, either on complaint by a prosecutor or report of a police officer. To enact that all Courts shall have this power might lead to public inconvenience in the case of a Court held at the same station as that of the magistrate, but any such inconvenience will be avoided by leaving the regulation of this matter in the hand of the Government. The Government will probably authorize all Courts at a distance from the magistrate's station to exercise the full original jurisdiction referred to in this article.

CCXXX.

Whenever a criminal case is referred by a magistrate to a Subordinate Criminal Court, the order of reference, if the case have been transmitted by a police officer, shall be recorded on such officer's report, and if the complaint have been preferred direct to the magistrate, the process for causing the attendance of the accused shall be made returnable to the Court to which the case is referred, and the witnesses shall be directed by the summons to attend at such Court. Cases how to be referred.

CCXXXI.

In the trial of criminal cases, whether brought before them on reference by the magistrate, or directly by complaint preferred to themselves, or by the report of a police officer, the Subordinate Criminal Courts shall be guided by the rules prescribed for the guidance of the magistrate in similar cases, and police officers and others shall be bound to obey all orders and processes issued in such cases by a Subordinate Criminal Court in like manner as if they had been issued by the magistrate. Subordinate Criminal Courts to follow the same rules of procedure as the magistrate.

CCXXXII.

In every case before a Subordinate Criminal Court, wherein the Court, at any stage of the proceedings, may be of opinion that the evidence is such as to warrant a presumption that the defendant has been guilty of an offence calling for a more severe punishment than the Court is authorized to adjudge, it Mode of proceeding in cases beyond jurisdiction.

shall stop further proceedings, and if the case have been brought before it by complaint directly preferred, shall leave the complainant to apply to the magistrate, and in all other cases shall submit its proceedings to the magistrate, who shall either try the case himself, or if the case have been submitted by a Subordinate Criminal Court of the second class, refer it, at his discretion, to a Subordinate Criminal Court of the first class. In either case, the Court which gives judgment in the trial shall examine the parties and the evidence, as if no proceedings had been held in any other Court.

Under the existing system, magistrates are authorized to refer Criminal Cases to the Subordinate Courts for investigation and report. Upon the receipt of the report the magistrate decides the case upon evidence taken before another Court The rules proposed by us require that the evidence shall always be taken by the Court which pronounces sentence.

CCXXXIII.

Foregoing rule not to interfere with the power of a S.C.C. to commit for trial before the Session Court.

Provided, that nothing in the last preceding article shall be held to interfere with the exercise of power specially conferred upon a judge of a Subordinate Criminal Court, in regard to committing or holding to bail persons charged with criminal offences to take their trial before the Session Courts.

CHAPTER XVI.

Place where Preliminary Investigations and Trials held, an open Court.

CCXXXIV.

Place where investigation made, an open Court.

The room or place in which the magistrate, or judge of a Subordinate Criminal Court, shall sit to hear and try any complaint triable by himself, or to conduct the preliminary investigation into any case triable by the High Court or a Session Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them; but it shall be lawful for the magistrate or judge of a Subordinate Criminal Court, in his discretion, to order that during the investigation into any particular case triable by the High Court or a Session Court, no person shall have access to, or be, or remain in such room or building without the consent or permission of such magistrate or judge, if it appears to him that the ends of justice will be best answered by so doing.

CHAPTER XVII.

Of Recognizance and Security to keep the Peace.

CCXXXV.

Personal recognizance to keep the peace in cases of conviction.

Whenever a person charged with rioting, assault, or other violent breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, shall be convicted of such charge before any Criminal Court by which the offence may be cognizable; and the Court by which a final sentence or order in the case may be passed, shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace, from the person so convicted; it shall be lawful to the Court passing the final sentence or order, to direct that the person so convicted be required to execute a formal engagement in a sum proportionate to such person's condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year from the time of the prisoner's discharge, if the sentence or order be passed by a magistrate or other officer exercising the powers of a magistrate, or three years, if the sentence or final order be passed by the High Court, or by a Session Court.

The rules of this chapter are taken from the law on the same subject now in force in the Presidency of Bengal.

CCXXXVI.

In cases wherein it may appear necessary to require security for keeping the peace in addition to the personal recognizance of the party, it shall also be lawful to the Court passing the final sentence or order, to direct the same, and to fix the amount of the security bond to be executed by the surety or sureties; with a provision that if the same be not given the party required to find the security shall be kept in custody for any time not exceeding one year, if the order be passed by a magistrate, or other officer exercising the powers of a magistrate, or three years if the order be passed by the High Court, or by a Session Court. Security to keep the peace.

CCXXXVII.

It shall be lawful for the magistrates, or other officers exercising the powers of a magistrate, to take a recognizance from a party in all cases wherein it may appear just and necessary to require the same for the maintenance of the peace in their respective jurisdictions, although the party to be bound in such recognizance may not have been convicted of any specific offence. Personal recognizance without conviction.

CCXXXVIII.

In cases wherein it may appear necessary to require security for keeping the peace, in addition to the recognizance of the party, it shall be lawful for such magistrate, or other officer exercising the powers of a magistrate, to direct the same, although the party required to give such security may not have been convicted of any specific offence, and to fix a reasonable amount for the security bond to be executed by the surety or sureties. Security without conviction.

CCXXXIX.

Whenever it shall appear to the magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, need not exceed one year, it shall be lawful for him, without reference to superior authority, to give directions accordingly, and in default of such recognizance or additional security, to commit the party to prison in the civil gaol until he shall do what has been required of him. For one year.

CCXL.

Whenever it shall appear to the magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, ought to exceed the period of one year, the magistrate or other officer aforesaid shall record his opinion to that effect, with an order specifying the amount of recognizance and security, as well as the number of sureties which should in his judgment be required, and the period for which the recognizance and security should be required, which however shall in no case exceed three years. If the party shall not furnish the recognizances and security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Court of Session (according as the order may have been passed by a magistrate of Calcutta or by a magistrate of a district in the Mofussil), which, after examining them and calling for any further information or evidence which it may think necessary, shall pass orders on the case confirming, modifying, or annulling the orders of the magistrate or other officer as aforesaid, and if the orders so passed by the High Court or Session Court confirm to any extent the requisition for recognizance or securities, the High Court or Session Court shall direct the magistrate or other officer as aforesaid to commit the party to prison in the civil gaol until he shall do what has been required of him. For more than one year.

CCXLI.

Provided always, that no party shall be kept in prison under the provisions of the foregoing articles for a longer period than that for which the recognizance and securities have been required from him. Imprisonment not to exceed period of recognizance and security.

CCXLII.

When magistrate may release persons under requisition of security.

The magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security to keep the peace, whether by their own orders or by those of any other person exercising the powers of a magistrate; provided the magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

CCXLIII.

When he must report.

In cases in which a magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security to keep the peace, by order of the High Court, or of a Session Court, can be safely released without such security, the magistrate shall make an immediate report of the case, with his opinion, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCXLIV.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the peaceable behaviour of parties, may, at all times, obtain a discharge from their future responsibility, by delivering up or causing to be delivered up the parties for whom they may have become responsible, to the proper magistrate. In such case it shall be competent to such parties to find new sureties.

CCXLV.

Proceeding to compel payment of penalty of personal recognizance.

Whenever it may be proved before the magistrate that any such recognizance of a party as aforesaid has been forfeited, he shall proceed to enforce the penalty of such recognizance in the mode prescribed for the satisfaction of decrees of the Civil Court.

CCXLVI.

Proceeding to compel payment of penalty by sureties.

Whenever it may be proved before the magistrate that any such recognizance has been forfeited, if a security bond shall have been taken and the magistrate shall think that proceeedings should be had upon such bond, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the magistrate shall proceed to levy the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XVIII.

Security for Good Behaviour.

CCXLVII.

When magistrate may require security for good behaviour for one year.

Whenever it shall appear to a magistrate, from the evidence to general character adduced before him, that any person is by repute a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, it shall be competent to the magistrate to require security for the good behaviour of such person for a definite period not exceeding one year.

The rules of this chapter are also taken from the law on the same subject now in force in the Presidency of Bengal.

CCXLVIII.

How to proceed in cases beyond one year.

Whenever it shall appear to a magistrate, from the evidence to general character adduced before him, that any person is by habit a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have

been stolen, of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community, the magistrate shall record his opinion to this effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour.

CCXLIX.

If the person required to furnish security, as provided in the last preceding article, shall not furnish the security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Sessions Court, (according as the order may have been passed by a magistrate of Calcutta, or by a magistrate of a district in the Mofussil,) which, after examining them, and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case, either confirming, modifying, or annulling the orders of the magistrate, as it may judge proper and equitable.

Case to be laid before the High Court or Session Court.

CCL.

In all such cases, if the High Court or Session Court shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three years, in the event of his not giving the security required from him.

High Court or Session Court may require security not exceeding three years.

CCLI.

In every instance in which security for good behaviour may be required, whether by the High Court, the Session Court, or the magistrate, the amount of the security, the number of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated.

What the order for security is to contain.

CCLII.

In the event of any person required to give security under the provisions of the foregoing articles failing to furnish the security so required, he shall be committed to prison until he furnish the same; provided always, that no party shall be kept in prison for a longer period than that for which the security has been required from him.

In default of security, party to be committed to prison.

CCLIII.

The magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for good behaviour, whether by their own orders or by those of any other person discharging the functions of a magistrate; provided the magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

When magistrate may release persons under requisition of security.

CCLIV.

In cases in which a magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security for good behaviour, by order of the High Court or of a Session Circuit, can be safely released without such security, the magistrate shall make an immediate report of the case, with his sentiments, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

When he must report.

CCLV.

Persons who may become sureties for the good behaviour of parties may at all times obtain a discharge from their future responsibility, by delivering up or causing to be delivered up the parties for whom they may have become responsible to the proper magistrate. In such case it shall be competent to such parties to find new sureties.

How persons who have become sureties may discharge themselves.

CCLVI.

Proceeding to compel payment of penalty by sureties.

Whenever the magistrate shall be of opinion, that by reason of an offence proved to have been committed by the person for whose good behaviour security has been given, proceedings should be had upon the bond executed by the surety or sureties, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the magistrate shall proceed to levy the penalty from such surety or sureties, by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid, and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XIX.

Juries and Assessors.

CCLVII.

Grand juries abolished.

Grand juries shall be abolished.

CCLVIII.

Trials in Calcutta to be by jury.

The trial of all offences within the limits of the town of Calcutta, except offences punishable upon summary conviction, shall be by jury.

CCLIX.

Governor General in Council may extend trial by jury to other places.

The provisions of the preceding Article may be extended by the Governor General in Council to such places beyond the limits of the town of Calcutta as he may see fit.

CCLX.

Trial by jury, before the Session Court, of registered persons.

Criminal trials before the Session Judge, in which a British subject, or an European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor General in Council may see fit to extend this rule, registered according to such rules as the Governor General in Council shall prescribe, is the defendant or one of the defendants, shall be by jury, of which at least one half shall consist, if such defendant desire it, of persons so registered.

How the jury is to be constituted.

CCLXI.

Joinder of registered and non-registered persons.

Criminal trials before the Session Judge, in which registered and non-registered persons are joined as defendants, shall be by jury, and such joinder shall not be a ground of severance at such trial.

CCLXII.

How the jury is to be constituted in such cases.

In such cases, if the non-registered defendant desire it, at least one half of the jury shall consist of non-registered persons, and if the registered defendant also desire to be tried by a jury of which one half are registered persons, then the jury shall be composed of an even number, of which one half shall be registered, and the remaining half non-registered persons.

CCLXIII.

Number of which the jury is to consist.

In all trials, whether before the High Court at Calcutta or before the Session Judge, the jury shall consist of not less than three, nor more than nine persons, and unanimity, or a majority of not less than two thirds with the concurrence of the judge, shall be necessary for a verdict of guilty; and in default of such unanimity, or of such majority with the concurrence of the judge, the defendant shall be acquitted.

Number of voices necessary to a verdict of guilty.

CCLXIV.

In Calcutta, jury not to consist of less than nine.

Provided that at Calcutta the jury shall, in all cases, consist of nine persons, and at all other places, of such number of persons, not less than three, as the Governor General in Council shall from time to time direct.

CCLXV.

Trials before the Session Court with assessors.

For all classes of the community not included in the number of those to whom the mode of trial by jury has by the above provisions been extended, trials before the Session Judge shall be conducted with the aid of two or more assessors as members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of such assessors shall be given separately and discussed; and if any of the assessors or the judge shall desire it, the opinion of the assessors shall be recorded in writing. But the decision is vested exclusively in the judge.

CCLXVI.

Who are capable of serving as jurors and assessors.

All persons resident within the limits of the general jurisdiction of the High Court shall, according to such rules, and subject to such qualifications as shall be fixed in manner herein-after mentioned, be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

CCLXVII.

High Court to make rules in regard to jurors and assessors.

The High Court shall have power from time to time, to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such jurors and assessors, and such other regulations relating thereto, as it may deem expedient and proper; provided that such rules and regulations shall before they are issued have received the sanction of the Governor General of India in Council.

Of the Courts at present administering criminal justice, the Supreme Court, as we have already stated, acts by the instrumentality of grand and petit juries, like an ordinary Court of oyer and terminer in England. No other Criminal Courts in India follow the same course.

The Nizamut Adawlut hears such cases as are referred to it by the Session Judge. The record of trial is heard, and the sentence passed by a single judge, except in cases of capital punishment, which can be inflicted only by the concurrent voices of two judges.

The Session Court tries only such cases as are sent by the magistrate, after a preliminary investigation. That Court tries with the aid either of a Mohamedan law officer, of a jury, or of assessors. On the conclusion of the trial, the law officer delivers his opinion, or the jury its verdict, as the case may be. When assessors are employed, they state to the judge successively their respective opinions. In the event of a difference of opinion as to the guilt of the accused between the Session Judge and the law officer, the case must be referred for the opinion and sentence of the Nizamut Adawlut; but in cases tried by jury, or with the aid of assessors, the decision is vested in the Judge, any difference of opinion between him and those associated with him in the trial being always recorded.

The magistrate and his subordinates try cases which are brought before them in the first instance, and decide without the assistance of jury or assessors.

The provisions prepared by us on the subject of juries commence with a rule to the effect that grand juries shall be abolished. This institution has never existed in India out of the Presidency Towns,—is not adapted to the country,—and, as coming between the magistrate and the session judge, so as to control in any way the proceedings of the former, would not be understood or appreciated by the great mass of the community. The retention of the grand jury in Calcutta would involve a very wide, and as we think an unnecessary diversity from the practice of the mofussil in the mode of dealing with criminal charges.

It is different with the trial by jury. We propose to retain this mode of trial in Calcutta, and in the case of British subjects in the mofussil; to extend it to certain other classes in the mofussil who have not hitherto enjoyed it; and to leave it to the discretion of the Governor General in Council to extend it to such other places out of Calcutta as he may think fit.

It will be seen, however, on reference to the rules which we have proposed, that the right of trial by jury in the case of persons residing beyond the limits of any place to which this mode of trial is extended, is to be conditional upon registration, according to such rules as the Governor General in Council shall prescribe.

In a country with such a diversified population as India comprehends, it would be extremely difficult to insert in a legislative measure any positive rule of national or local distinctions which would not be open to grave objections. The difficulties of legislation will be met to a great extent by empowering the Governor General in Council to issue from time to time such instructions as he may deem proper in regard to the registration of persons belonging to those classes mentioned in the rules, or of any other persons to whom, in his judgment, the right of trial by jury should be extended; and questions of a difficult and delicate nature will

be anticipated by the Government, and not discussed in the Courts. It will be at the option of the parties entitled to register to avail themselves of their privilege, and we think they should be allowed to exercise this option at any time previous to trial. A reference to the register will at once decide the right to be tried by a jury.

Provision is made for the trial of cases in which registered and non-registered persons are joined as defendants by a jury composed of an equal number of registered and non-registered persons.

In regard to the number of the jury, it is proposed that in Calcutta the jury shall always consist of nine, and at all other places of such number of persons, not more than nine and not less than three, as the Governor General in Council shall from time to time direct. The number in different places must be regulated by the number of available qualified jurors; and in many places the number of three will be procured with greater difficulty than nine in Calcutta.

In Calcutta the number of the jury has hitherto been twelve; and unanimity has been essential to a verdict, such verdict being binding upon the Court. In the mofussil, "the " mode of selecting the jurors, the number to be employed, and the manner in which their " verdict is to be delivered, are all left to the discretion of the presiding judge," in whom the decision is exclusively vested. We do not propose to follow either of these courses. Whatever may be said in favour of a system which requires unanimity as essential to the validity of a verdict of guilty, we are of opinion that it would be unadvisable in giving greater efficacy to the finding of a jury in the mofussil than has hitherto prevailed, to allow a single opinion to nullify the opinions of the majority. As little do we think that the presiding judge shoudl be at liberty entirely to over-rule the verdict of even an unanimous jury. We accordingly propose that unanimity, or, with the concurrence of the judge, a majority of not less than two thirds, shall be necessary for a verdict of Guilty. The necessity for some modification of the rule which requires complete unanimity has been recognized in India; for, since our adoption of the provisions on this subject, we observed, in the Calcutta Government Gazette of the 26th August last, a Bill, which probably has by this time become law, in which is a clause to the effect that, if a jury cannot agree after six hours' deliberation, but a majority of not less than three fourths are agreed, the verdict of such majority shall be as valid as if the Jury were unanimous. Under the rules which we propose, which are essentially in concurrence with those recommended by the Law Commission in Calcutta, there will not be any necessity for fixing any period for the deliberation of the jury. If the jury are unanimous for convicting, their verdict will be final as to the facts of the case; if the number of voices for conviction is less than two thirds there will be a verdict of acquittal; and if two thirds, or any larger number short of the whole, convict, the decision will rest with the judge.

Trials in the Session Courts of the mofussil, when not by jury or assessors, must now be conducted with the aid of the Mahomedan law officer. The introduction of the Penal Code will sweep away every remaining vestige of the Mahomedan law from the administration of criminal justice in India; and the law officer will no longer be a necessary part of a Session Court.

At present, in the mofussil, in a trial by jury, the decision of the jury is given in the form of a verdict; in a trial by assessors, the opinion of each assessor is given separately, and discussed. In the year 1851 (the last year the returns of which are in the hands of the Commission), the number of cases decided by the Session Judges in the Lower Provinces was 1,243; of these, 130 were tried with the aid of assessors, and 181 of juries. Of the former, 115 were decided in accordance with, and 15 contrary to, the opinions of the assessors; and of the latter, 147 in accordance with, and 34 contrary to, the verdict of the jury. There is no return of the number of *trials* before the Session Courts during the same year in the North-west Provinces: but the number of persons tried was 121 in excess of the number tried by those courts in the Lower Provinces, the total number tried in each being nearly 4,000. The difference in the number of cases was probably not in greater proportion. Of the cases tried in the courts of the North-west Provinces, 379 were tried with the aid of assessors, and 847 with the aid of juries. Of the former, 301 were decided in conformity with the opinions of the assessors; and of the latter, 679 in conformity with the verdict of the jury. These statistics, in our judgment, justify the conclusion that assessors may be employed with advantage in all criminal trials before the session Courts in which juries are not employed. The existing rule of the Bengal Code adverts to the employment of respectable natives as assessors, " with a view to the advantages derivable from their observations, particularly in the examination of witnesses." These words we have retained for the purpose of indicating the mode in which the employment of assessors may be rendered most efficient. We have also retained the provision of the Bengal Code in regard to the separate recording and discussion of the opinions of the assessors, as better calculated than any other plan that can be devised for securing carefulness and consideration on the part of those who may be associated with the session judge in the trial of criminal cases.

A difference is proposed in the mode of taking the verdict of a jury from that of taking the opinion of the assessors. In the former case, the judge will sum up the evidence for the guidance of the jury, and then call for their verdict. In the latter, the judge will call for the opinions of the assessors, without any expression of his own. There is a reasonable apprehension that the native assessor, when his own opinion is to be subjected to discussion in open Court, is likely to be unduly biassed by the opinion of the presiding judge: we have endeavoured to obviate this by the order of procedure which we have described.

The Code of Procedure contains no rules in regard to the qualification, appointment, or summoning of jurors and assessors. The regulation of these, and other points incidental to the efficient working of the plan, will be left to the High Court under sanction of the Governor General in Council.

CHAPTER XX.

Trials before the Court of original Criminal Jurisdiction constituted by a Judge or Judges of the High Court.

CCLXVIII.

When it happens that a Judge of the High Court has sent a case for trial before the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, or that a person is appointed to officiate as a Judge of the High Court, who had previously officiated in the Court by which commitments are made to that Court, and there are before the High Court charges preferred by himself upon which trials are still to be held, it shall nevertheless be competent to him to proceed thereupon as in other cases. A person holding the office of Judge of the High Court may try cases committed by himself.

An existing provision of the Bengal code directs that when the officer who has made a commitment to the Session Court happens to be appointed to preside as judge in that Court before the trial has taken place, the case shall not be tried by him, but shall be reserved to be disposed of under a special provision. We are of opinion that the previous intervention in the case as committing officer should not be a legal disqualification to preside at a trial as a judge. The rule laid down in this article may be unnecessary with reference to the High Court, but as the disqualifying provision exists in the Bengal code, its insertion here will prevent any doubt upon the subject.

CCLXIX.

It shall be competent to the High Court to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice. Postponement of trial.

CCLXX.

When the Court is ready to commence the trial, the defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged. Commencement of trial.

CCLXXI.

If the defendant plead "guilty," the Court shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy itself that the defendant comprehends the nature of the charge and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon. Plea of guilty.

CCLXXII.

If the defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course, and in the manner in which it has heretofore been taken in trials in the Supreme Court, except in so far as it is otherwise provided by this Code of Procedure. Refusal to plead, or plea of "not guilty." Mode of taking evidence.

In trials before the Supreme Court the judge takes notes of the evidence, which is not recorded by an officer of the Court. The excepting clause is necessary with reference to the rule which dispenses with oaths and affirmations, and also to the rule which requires that the examination of the defendant before the magistrate shall be given in evidence at the trial.

CCLXXIII.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI. Witness refusing to answer may be committed to custody.

CCLXXIV.

The examination of the defendant before the magistrate shall be given in evidence at the trial. Examination of defendant, evidence at the trial.

This is the existing practice in all cases in the Session Courts in which the examination of the defendant contains anything of the nature of a confession or admission of guilt, and when such examination has been attested by witnesses. Under this rule the examination will be admitted in all cases when certified by the magistrate, as provided in Article CXXXV.

CCLXXV.

Court may summon necessary evidence.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case.

CCLXXVI.

Defence.

When the case for the prosecution has been brought to a close, the defendant shall be called upon to enter upon his defence and to produce his evidence.

CCLXXVII.

Witnesses for the defence.

The defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXVI.

CCLXXVIII.

Adjournment.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

CCLXXIX.

Jury to attend at adjourned sitting.

In the event of the adjournment of a trial, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial.

A bill which was before the Legislative Council of India, when this rule was adopted by the Commission, provides, that "when any trial for any crime in any of the Supreme Courts by reason of its length requires to be adjourned until another day, the Court shall on its adjournment permit the jurors to go at large until the time of meeting again according to the adjournment, unless under the particular circumstances of the case such course seem inexpedient."

CCLXXX.

Summing up and delivery of verdict.

The Judge shall sum up the evidence on both sides, and the jury shall afterwards deliver their finding upon the charge.

CCLXXXI.

Conviction.

If the defendant is convicted, the Court shall pass sentence upon him according to law.

CHAPTER XXI.

Cases reserved, and Cases certified by the Advocate General.

CCLXXXII.

Judges of the High Court, in the exercise of original jurisdiction, may reserve cases for the opinion of the High Court.

When any person shall have been convicted of any offence before a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, the Court before which the case shall have been tried may, in its discretion, reserve any question of law which shall have arisen on the trial for the consideration of the High Court, and thereupon shall have authority to respite execution of the sentence on such conviction, or postpone the sentence until such question shall have been considered and decided, as it may think fit; and in either case the Court, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and receive sentence, or to render himself in execution, as the case may be.

CCLXXXIII.

Statement of case.

Hearing.

When the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court has reserved a point of law for the opinion of the High Court, the Judge or Judges before whom the trial was held shall, in a case signed by such Judge or Judges, state the point or points of law which shall have been so reserved, and such case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges reserving the point or points shall if possible be one, and the Judges by whom such case

is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to pass such judgment and sentence as to the said Judges shall seem right, or to alter the sentence, if any, passed by the Court of original jurisdiction.

CCLXXXIV.

Error in law may be certified by the Advocate General.

It shall be lawful for any party upon whom sentence of punishment has been passed by a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, to present a memorial to the Advocate General, alleging that there is error in the decision of such Court on a point of law, and distinctly specifying such error. If the Advocate General is of opinion that there is error as set forth in the memorial, or that a point or points of law decided by the Court of original criminal jurisdiction should be further considered, he shall certify the same under his signature on the back of the memorial, and transmit the memorial with such certificate to the Judge or Judges before whom the trial was held; otherwise he shall reject the memorial.

CCLXXXV.

Statement of case.

Upon the receipt of such memorial, together with the certificate of the Advocate General, the Judge or Judges before whom the trial was held shall transmit the memorial and certificate, with a statement of facts and such remarks as he or they may deem necessary, to the High Court. The case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges before whom the trial was held shall, if possible, be one; and the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said Judges shall seem right.

Hearing.

See Note to Chapter XXVI.

CHAPTER XXII.

Trials before the Session Courts.

CCLXXXVI.

Cognizance of offences by the Session Court in original jurisdiction.

Except in the cases referred to in Article CXVI. a Court of Session, as a Court of original criminal jurisdiction, shall not take cognizance of any offence, but upon a charge preferred by the Advocate General, or by a magistrate or other officer specially empowered by the Government to act in this behalf.

CCLXXXVII.

A person holding the office of Session Judge may try cases committed by himself.

When it happens that a Zillah Judge has sent a case for trial before the Court of Session, or that a person is appointed to officiate as Judge of a Court of Session, who had previously officiated in the Court by which commitments are made to that Court of Session, and there are before the Court of Session charges preferred by himself upon which trials are still to be held, he shall nevertheless proceed thereupon as in other cases.

See Article CCLXVIII.

CCLXXXVIII.

Postponement of trial.

It shall be competent to a Court of Session to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice.

CCLXXXIX.

Commencement of trial.

When the Court is ready to commence the trial, the defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCXC.

Plea of "guilty."

If the defendant plead "guilty," the Judge shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the defendant comprehends the nature of the charge and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon.

CCXCI.

Refusal to plead, or plea of "not guilty."

If the defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course.

CCXCII.

How evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness and signed by him in the presence of the Judge. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be at the discretion of the Judge to take down or cause to be taken down any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Judge shall allow the same to be put, the question and answer shall be taken down, and the objection and the name of the person making it shall be noticed in taking down the depositions, together with the decision of the Judge upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

The evidence in trials before the Session Courts is required to be taken as here provided, with reference to the appeal to the High Court.

CCXCIII.

Witness refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI.

CCXCIV.

Examination of Defendant, evidence at the trial.

The examination of the defendant before the magistrate shall be given in evidence at the trial.

CCXCV.

Session Court not to receive written confession of guilt made to the police.

It shall not be competent to the Session Court to receive in evidence against the defendant any written admission or confession of guilt or other statement made by him to the darogha, or other officer of police, and by him reduced into writing.

CCXCVI.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the foregoing Article shall prevent the Court from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

CCXCVII.

Court may summon necessary evidence.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case.

CCXCVIII.

Defence.

When the case for the prosecution has been brought to a close, the defendant shall be called upon to enter upon his defence, and to produce his evidence.

CCXCIX.

Witnesses for the defence.

The defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXVI.

CCC.

Adjournment.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

CCCI.

Jury or assessors to attend at adjourned sitting.

In the event of the adjournment of a trial, the jury or assessors, as the case may be, shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial.

See note to Article CCLXXIX.

CCCII.

Delivery of opinions of assessors. Of verdict of jury.

In cases tried with the aid of assessors, the judge before pronouncing his own opinion, shall call upon the assessors for their opinions. The opinion of each assessor shall be given separately and recorded. In cases tried by jury, the judge shall sum up the evidence on both sides, and the jury shall then deliver their finding upon the charge.

CCCIII.

Conviction.

If the defendant is convicted, and the case is one which the Session Judge is competent to dispose of finally, he shall proceed to pass sentence upon the defendant according to law.

CCCIV.

Reference to High Court.

If the case is one in which, if the defendant be convicted, it belongs to the High Court to pass sentence, the Session Judge shall record the conviction, and refer the case to the High Court, with a statement in writing of his opinion as to the sentence which should be passed upon the defendant; and in cases tried by jury, the Session Judge shall also transmit with the case a report of his direction to the jury.

By Article XIII. of the rules relating to the Criminal Courts of Original Jurisdiction, the Session Judges are required to refer to the High Court cases in which the defendent is convicted of an offence which, by the Penal Code, is punishable with death.

CCCV.

Transmission of monthly calendar of trials by Session Judge.

The Session Judges shall transmit to the High Court monthly statements or calendars in such form as the High Court shall prescribe, of all trials held by them, exhibiting the sentence passed upon each defendant, together with an abstract of the evidence given at the trial.

This article provides for the continuance of an existing practice which has been found to work very beneficially. The abstract calendar of trials contains an epitome of the case, exhibiting in brief the evidence which supports the judgment, and the sentence which has been passed. The purposes to which these calendars are applied will be seen on reference to Chapter XXV.

CHAPTER XXIII.

HIGH COURT,

As a Court of Reference.

CCCVI.

Court for hearing of referred trials.

A case referred by a Session Judge for the final judgment and sentence of the High Court shall be heard by a Court constituted by three judges of the said High Court, and the sentence shall be signed by not less than two of such judges.

CCCVII.

Hearing of case referred, tried with assessors.

In cases referred for the final judgment and sentence of the High Court, which have been tried with the aid of assessors, that Court shall revise the record of trial submitted by the Court of Session, and if it approves of the conviction of the defendant, it shall proceed to sentence him to punishment according to law.

T

CCCVIII.

Acquittal.

If the High Court disapproves of the conviction of the defendant absolutely, it shall pass a judgment of acquittal.

CCCIX.

Difference of opinion between High Court and Session Court as to offence proved.

If the High Court disapproves of the conviction of the defendant, on the ground that the offence proved does not answer to the legal definition of the offence of which he is convicted, it shall annul the conviction; but it shall be competent to the Court to pass a judgment convicting the defendant of the offence which it deems to be proved by the evidence, and to sentence him to punishment according to law.

CCCX.

Competence of Court to direct further inquiry, &c.

In any case referred as above to the High Court, it shall be open to the prosecutor or the defendant to move the Court for further inquiry upon any point bearing upon the guilt or innocence of the defendant; and it shall be competent to the Court, upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case.

CCCXI.

Hearing of case referred, tried by jury.

In cases referred for the sentence of the High Court which have been tried by jury, the Court, on reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, shall determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right.

CHAPTER XXIV.

Finding, Judgment, and Sentence.

CCCXII.

Form of verdict in jury trials.

In any trial by Jury, when the Jury are unanimous in thinking the defendant guilty, the verdict shall be that the defendant is guilty of the offence specified in the charge, or of the offence specified in such a head of charge, when there are more heads than one. When the Jury are not unanimous, but two thirds or more concur in thinking the defendant guilty, the verdict shall be that the defendant is found guilty of the offence specified in the charge, or in such a head of charge as above provided, by a majority consisting of six, seven, eight, as the case may be, of the Jurors. When any number of the Jurors exceeding one third concur in thinking the defendant not guilty, the verdict shall be that the defendant is not guilty. When the Jury, or two thirds or more of the Jurors, concur in thinking the defendant guilty of an offence, but are doubtful under which of two heads of charge the offence falls, the verdict shall be that the defendant is guilty either of the offence charged in such a head, or of the offence charged in such another head of charge.

CCCXIII.

What the judgment is to specify.

When the trial in any Criminal Court is concluded, the Court, in passing judgment, if it convicts the defendant, shall distinctly specify the offence of which, and the clause of the Penal Code under which, it convicts him; or if it be doubtful under which of two clauses the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to clause 61.

The latter part of the two preceding articles has been framed in accordance with the provisions of the following clause of the Penal Code: "In all cases in which judgment is "given in the manner prescribed in the law of procedure that a person is guilty of an offence, "but that it is doubtful under which of certain penal provisions of this Code he is punishable, "the offender shall be liable to be punished with whatever punishment is common to the "penal provisions between which the doubt lies, and if imprisonment is common to the penal "provisions between which the doubt lies, and any one of those provisions admits of simple "imprisonment, the offender may be sentenced to simple imprisonment."

CCCXIV.

Acquittal.

If the defendant, after having been called upon for his defence, is acquitted, the acquittal shall be recorded so as to have a distinct reference to the charge to which the defendant was required to answer, in order to save him from any further prosecution upon the facts to which it related.

CCCXV.

The finding and sentence shall be recorded in the following form, or to the same effect:— Form of finding and sentence.

In trials by Jury:

When the Jury are unanimous:

The Jury find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* [*sentence*].

2d. The Jury find that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

When the Jury are not unanimous, but two thirds or more of the Jurors concur in thinking the defendant guilty:—

3d. A majority of the Jurors, consisting of seven of their number, find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code. The Court concurs in such finding, and, as *Z* has, by reason of the premises, become liable to cumulative punishment under the 112th Clause of the Penal Code, the Court directs that the said *Z* be [*sentence*].

4th. A minority of the Jury, consisting of two of their number, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code, and has by reason of the premises become liable to cumulative punishment under the 112th Clause of the Penal Code. The Court concurs in such finding, and directs that the said *Z* be discharged.

5th. When the Jury are not unanimous, but any number of the Jurors exceeding one third concur in thinking the defendant not guilty, the form No. 2 shall be followed.

When the Jury, or two thirds or more of the Jurors, concur in thinking the defendant guilty of an offence, but are doubtful under which of two heads of a charge the offence falls:—

6th. The Jury (*or* The majority of the Jurors consisting of of their number, *as the case may be*,) find that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code. The Court directs (*or*, the Court concurs in such finding, and directs,) that under the provisions of the above-mentioned Clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials with Assessors:

7th. The Court, concurring with the Assessors, (or one or more of the Assessors,) finds that *Z* is guilty of the offence specified in the charge; viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said *Z* be [*sentence*].

8th. The Court, differing from the Assessors, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

9th. The Court, concurring with one of the Assessors, finds that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code; and the Court directs that, under the provisions of the above-mentioned Clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials upon a formal charge, without Jury or Assessors:

10th. The Court finds that *Z* is guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code; and the Court directs that the said *Z* be [*sentence*].

11th. The Court finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

In trials in which no formal charge has been prepared:

12th. The Court finds that *Z* has committed assault, and has thereby committed an offence punishable under the 342d Clause of the Penal Code, and directs that the said *Z* be [*sentence*].

13th. The Court finds that the complaint of assault is not proved, acquits *Z*, and directs that he be discharged.

CCCXVI.

Conviction of offences punishable cumulatively.

Where a person shall be convicted of any two offences which are punishable cumulatively, it shall be lawful for the Court to sentence him for each of the two offences to the penalties prescribed by the Penal Code in respect of each of the two offences, provided that the punishment to which such person is sentenced for each of the two offences is within the ordinary penal jurisdiction of the Court; and it shall not be necessary for the Court, only by reason of the cumulative punishment being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

CCCXVII.

Conviction of several offences.

Where a person shall be convicted of several offences at the same time, punishable under the same or different clauses of the Penal Code, it shall be lawful for the Court to sentence him to the several penalties prescribed by the Code in respect of the several offences of which he shall have been so convicted, provided that the punishment to which such person is sentenced for each offence is within the ordinary penal jurisdiction of the Court, such penalties, when consisting of imprisonment, to commence the one after the expiration of the other; and it shall not be necessary for the Court, only by reason of the aggregate punishment for the several offences being in excess of the punishment which the Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

CCCXVIII.

Judgment on offender already imprisoned under sentence for another crime.

Where sentence shall be passed on a person already under sentence of imprisonment for another offence, it shall be lawful for the Court to award imprisonment on the subsequent conviction to commence at the expiration of the imprisonment to which such offender shall have been previously sentenced; and if empowered to pass sentence of transportation or banishment, the Court may award such sentence on the subsequent conviction to commence immediately, or at the expiration of the imprisonment to which such person shall have been previously sentenced.

CCCXIX.

A party who has once been tried upon a formal charge, prepared as directed in the rules of this Code of Procedure for preparing criminal charges, shall not be liable to a renewed prosecution. Party tried upon a formal charge not liable to renewed prosecution.

CCCXX.

In cases referred by the Session Judge for the final sentence of the High Court, the proper officer of the Court shall, within three days after passing of the sentence, or sooner if practicable, transmit a copy of it, under the seal of the High Court, and attested with his official signature, to the Session Judge, who shall immediately issue a warrant to the magistrate to cause the sentence to be carried into execution. The magistrate, upon the receipt of the warrant, shall cause the sentence to be executed, and return the warrant to the Session Judge, with an indorsement attested by his official seal and signature, certifying the manner in which the sentence has been executed. Execution of sentence of the High Court in cases referred by the Session Judge.

CCCXXI.

In cases tried by the Court of original jurisdiction at Calcutta, constituted by one or more judges of the High Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the chief magistrate of Calcutta. High Court, in original jurisdiction, to direct warrant of execution to chief magistrate of Calcutta.

CCCXXII.

In cases tried by the Session Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the magistrate of the district in which the trial was held. Session Court to direct warrant to district magistrate.

CCCXXIII.

Upon the receipt of a warrant under either of the two last preceding articles, the magistrate shall cause the sentence to be executed, and shall return the warrant when the sentence has been fully executed to the Court from whence it issued, with an indorsement under his official seal and signature, certifying the manner in which the sentence has been executed. Execution of sentence under two foregoing articles.

CCCXXIV.

In every case of imprisonment under the sentence of the High Court, whether as a Court of reference or of original jurisdiction, of the Session Court, and of the magistrate, the magistrate shall issue his warrant to the gaoler, stating the offence of which the defendant has been convicted, and the period during which he is to be imprisoned. In like manner, in every case of imprisonment under the sentence of a Subordinate Criminal Court, the Court passing the sentence shall issue its warrant to the same effect. Warrant of commitment in cases of imprisonment.

CHAPTER XXV.

HIGH COURT AS A COURT OF REVISION.

CCCXXV.

The High Court, in any case tried by the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it, that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, shall annul the sentence, and shall certify to the Session Court the sentence which may lawfully be passed for such offence; and thereupon the Session Court shall pass a new sentence according to law, and shall amend the record in accordance therewith. Revision in cases of illegal sentence.

CCCXXVI.

The High Court, in any case tried by the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it, that the sentence passed upon any person convicted by the Session Court is too severe, may mitigate the sentence to such extent as to the said High Court shall seem proper, and shall certify such mitigated sentence to the Session Court, which shall thereupon amend the record in accordance therewith, and proceed to give effect to the sentence of the High Court. When the sentence is too severe.

CCCXXVII.

When in trials with assessors the judgment is not warranted by the evidence.

The High Court, in any case tried by the Session Court, except cases tried by Jury, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it, that the judgment pronounced on any prisoner was not warranted by the evidence, may, if it thinks fit, require the Judge of the Court in which the conviction was had, to certify under his hand all or any part of the evidence taken in the case affecting such prisoner, with any observations which the Judge may be desirous of making in explanation of the judgment; and thereupon the High Court may annul such judgment, if such judgment shall appear to it not warranted by the evidence, and shall certify its proceedings to the Court in which the conviction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and if necessary, amend the record in accordance therewith.

CCCXXVIII.

Revision in Jury trials.

The High Court, in any case tried by jury in the Session Court, in which, upon a review of the abstract statement or calendars of prisoners punished without reference, it shall appear to it, that there has been error in the decision of the Session Court on a point or points of law, or that a point or points of law should be considered by the High Court, may call for the record, together with a report of the Session Judge's direction to the jury, and upon reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, may determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right. The High Court shall certify its proceedings to the Court in which the conviction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and if necessary, amend the record in accordance therewith.

CCCXXIX.

In cases of sentence by Session Judge, which ought to have been referred.

The High Court, in any case tried in the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it, that the case is one which ought to have been referred for the judgment and sentence of the High Court, may, if it think fit, annul the sentence passed by the Session Court, and require the Session Judge to refer the case, and thereupon the High Court shall pass such judgment and sentence as to the said High Court shall seem right.

CCCXXX.

General power of revision by the High Court.

The High Court may, whenever it thinks fit, call for the whole record of any criminal trial in any Criminal Court within its jurisdiction, and pass thereon such orders as it thinks fit, but not so as to enhance the punishment awarded, or punish any person acquitted in the Court which tried the case; provided that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from determining any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

See Note to Chapter XXVI.

CHAPTER XXVI.

Appeals.

CCCXXXI.

No appeal in cases of acquittal.

There shall be no appeal from a judgment of acquittal passed by any Criminal Court.

CCCXXXII.

Appeal in cases of conviction.

An appeal shall lie in all cases of conviction by the magistrates in the mofussil, and by the Judges of the subordinate Criminal Courts, to the Session Judge; and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, and by the magistrates of Calcutta, to the High Court.

CCCXXXIII.

Any person convicted by a judgment of any of the Criminal Courts of original jurisdiction mentioned in the last preceding article, may present a petition of appeal to the Court of appellate jurisdiction, which may call for the record of conviction, and confirm, or amend, or reverse the finding and sentence of the lower Court, but not so as to enhance the punishment awarded; provided, that if the party appealing be in gaol, he shall be at liberty to present his petition of appeal to the magistrate in charge of the same, who shall thereupon forward it to the proper appellate authority; provided also, that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from trying any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court. Proceeding in appeals.

CCCXXXIV.

In any case appealed as above, except a case tried by jury, it shall be open to the appellant to move the Appellate Court for further inquiry; and it shall be competent to the Court upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case. The Appellate Court shall at the same time direct whether the lower Court shall pass a fresh sentence in the case, or certify the result of the further inquiry and the additional evidence to the Appellate Court. Court of Appeal may direct further inquiry, &c.

CCCXXXV.

When a Magistrate or Judge of a Subordinate Criminal Court has convicted a person of an offence not triable by such Magistrate or Judge, it shall be competent to the Court of Appellate Jurisdiction to annul the conviction and sentence of the lower Court, and to direct the trial of the case by a Court of competent jurisdiction. Court of Appeal, how to proceed in a case of conviction by an incompetent Court.

CCCXXXVI.

An appeal shall lie from all orders in proceedings other than criminal trials, passed by the magistrates in the mofussil and by the judges of the Subordinate Criminal Courts, to the Session Court; and by the magistrates of Calcutta to the High Court; and it shall be competent to the Courts of Appellate Jurisdiction to pass upon such appeals such orders as they shall deem just and proper. Appeals from orders in proceedings other than trials.

CCCXXXVII.

The petition of appeal from a sentence of the Session Judge must be presented within ninety days immediately following and exclusive of the day on which sentence was passed; and from the sentence or order of any other Court within thirty days, calculated in the same manner. Period for presenting petition of appeal.

CCCXXXVIII.

Where the Appellate Court consists of more than one Judge, if there should be a difference of opinion among the Judges, and the Court be equally divided, the judgment of the Lower Court shall be affirmed. Result when Appellate Court is equally divided.

CCCXXXIX.

Except as provided in Article CCCXXX., the sentences passed by the Appellate Court upon criminal appeals shall be final. Finality of orders in appeal.

CCCXL.

It shall be at all times lawful for a Sessions Judge and for a magistrate, or other officer exercising the powers of a magistrate, to call for and examine the records of any Court immediately subordinate to their respective Courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate Courts; but it shall not be lawful for any other Court than the High Court to alter any sentence of any subordinate Court except upon appeal by parties concerned duly made according to the foregoing provisions. Powers of Session Judge and magistrate to regulate the proceedings of subordinate Courts.

CCCXLI.

Power of Session Court to direct bail.

The Session Court shall have a discretionary power of directing that any defendant shall be admitted to bail before a magistrate or Subordinate Criminal Court, or that the bail required by a magistrate or Subordinate Criminal Court be reduced; and also of directing that a party not in custody be admitted to bail on his surrendering to a warrant.

CCCXLII.

Power of High Court to direct bail.

The High Court shall have the like discretionary power in regard to any defendant, or any party, charged with an offence before any Criminal Court.

The only cases in which any proceedings can be had for the correction of errors in law or fact are those in which the defendant is convicted. The verdict of a jury, or the judgment of a Court, acquitting the accused, will not be open to further question or revision.

In cases tried before the Courts of original criminal jurisdiction constituted by one or more judges of the High Court, we propose that the decision of the Court shall be conclusive as to the facts of the case, and that there shall be no appeal to the High Court from any sentence or order passed in any criminal trial before such Courts. In the determination of the facts of the case, the Court will have the aid of a jury composed of the greatest number of jurors of which the law will admit, and it is very doubtful whether any greater security against improper judgments would be attained by providing that the verdict of a jury shall be open to appeal. It will, however, be competent to the judge or judges trying the case to reserve any point of law for the opinion of the High Court, which, in the determination of the point reserved, will be competent to deal with the judgment of the Court of trial, as it shall think proper.

As a further means for the correction of errors in law, the Code provides that the party convicted may present a memorial to the advocate general, setting forth the error; and upon the certificate of that officer that such error exists, or that a point of law decided by the Court of trial should be further considered, the High Court will be bound to hear and determine the point raised by the certificate in like manner as if it had been reserved by the judges who tried the case.

The present mode of correcting errors in the decisions of the Mofussil Courts is by appeal to a superior Court. The question of the propriety of admitting an appeal in matters of fact from the sentence of a Court which has all parties before it to one which sees only the record has been fully and frequently considered by the authorities in India; and in the year 1847 the Judges of the Nizamut Adawlut in Calcutta, after consulting many of the judges and magistrates of the Bengal presidency, reported in favour of a continuance of the appeal, with a modification of the existing law, to the effect that the Appellate Court should be left at discretion to call for the proceedings on the trial, instead of being compelled to call for them, as at present. "The Court," they say, "would maintain the system of appeal modified as "above, because, even if comparatively few of the convictions of the lower Court be reversed, "the necessity is still shown for allowing an appeal, to ensure a fair administration of "justice. This will not be gained by allowing an appeal only on points of law, for there "are few such in connexion with criminal trials. Failure of justice principally arises "from conviction on insufficient evidence, or excessive punishment upon slight conviction." We are not prepared to dispute the correctness of the conclusion drawn by the Nizamut Adawlut, from their own experience, and the reports of their subordinates, and we accordingly propose to adopt the recommendation of the Court, but instead of, as at present, allowing any appeal to the magistrate from the inferior criminal Courts, to make the Session Court the one appellate authority in each district for hearing appeals from the decisions of the magistrate and subordinate criminal Courts of both classes, and the High Court the appellate authority for hearing appeals from the decision of the Session Courts and the magistrates of Calcutta. By the rules of chapter xxv. the High Court will be further empowered to exercise all the powers of revision in criminal cases now exercised by the Nizamut Adawlut, and to call for the proceedings of any trial in any Court subject to its authority, and to pass thereon such orders as it thinks fit, in favour of the party convicted by the Court of original jurisdiction, except that the verdict of a jury will always be final upon the facts of the case.

It appears to us that the rules which we propose will afford sufficient means for the correction of errors in criminal proceedings in the Courts of original jurisdiction. At present the Supreme Court has the power of granting a new trial in those instances in which such a course is admissible under the law of England; and the Nizamut Adawlut, upon cause shown, grants a rehearing of a case in which the final sentence has been passed by itself. We are of opinion that it is not necessary to make provision for either of these courses. Should circumstances transpire to throw doubt upon the correctness of the verdict or judgment in any case in which relief cannot be afforded by the High Court, under the rules of the Code of Procedure, a remedy will be found in the provision of the Penal Code which declares the competency of the Government of the Presidency within which an offender has been sentenced, at any time to remit the whole or any part of the punishment.

SCHEDULE A.

Explanatory Notes.—1st.—The entries in the 2d and 5th Columns of the Schedule, headed "Offence" and "Penalty," are not intended as definitions of the offences and penalties described in the several corresponding clauses of the Penal Code, or even as abstracts of those clauses, but merely as references to the subject of the clause of the Code, the Number of which is given in the 1st Column.

2d.—The Term "Bailable or not," in Column 3., is to be taken in connexion with the provisions of Articles CXLIV. and CXLV. of the Code of Criminal Procedure.

3d.—No offence is triable by a Court inferior to the Court specifically mentioned in Column 4. as competent to try such offence, but offences are triable by Courts superior to the Court so mentioned.

4th.—The entries in the last Column show when any offence entered in column 2. admits of cumulative punishment, and the number of the clause expressly providing for such punishment. The circumstances under which cumulative punishment may be inflicted will be ascertained on reference to the clauses themselves

CHAPTER IV.—OF ABETMENT.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
88	Previous abetment of any offence by instigation, if the offence is committed in consequence.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	The punishment of the offence - -	Cumulative, Clause 89.
90	Previous abetment of any offence punishable with imprisonment, by instigation, with actual delivery of a bribe.	Idem -	Idem - - -	Imprisonment to $\frac{1}{4}$ of the longest term for that offence, or fine as for that offence, or both.	
91	Previous abetment of any offence punishable with imprisonment, by instigation, with threat of injury.	Idem -	Idem - - -	Idem - - - - -	Cumulative, Clause 92.
93	Previous abetment by a person present instigating another to persist in the commission of an offence punishable with rigorous imprisonment for one year and upwards.	Idem -	Idem - - -	Imprisonment of either description, i. e. rigorous or simple, to $\frac{1}{4}$ of the longest term for that offence, or fine, or both.	
94	Previous abetment by instigating the public, or more than 10 persons, to the commission of any offence.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
95	Previous abetment of an offence by conspiracy, if the offence is committed in consequence.	Idem -	Idem - - - -	See Clause 88.	
96	Previous abetment by conspiracy of any offence punishable with imprisonment, if any act or illegal omission takes place in consequence in order to the offence.	Idem -	Idem - - - -	See Clause 90.	

CHAPTER IV.—Of Abetment—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty	6. When admitting of cumulative Punishment.
97	Previous abetment by any act or illegal omission intended to aid the commission of an offence, if the offence is committed.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	See Clause 88.	
98	When in an attempt to commit an offence, or in the commission, or in consequence of the commission of an offence, a different offence is committed which was likely to be committed.	Bailable if both offences are bailable.	By the Court by which the graver offence is triable.	The previous abettor of the first offence liable to the punishment of the last-mentioned offence.	Cumulative, Same clause.
99	When in consequence of previous abetment an offence is committed, which would be a different offence, but for some misconception of the doer from which the abettor is free, or but for some intention, &c. of the doer unknown to the abettor.	According as the offence contemplated by the abettor is bailable or not.	By the superior Court by which either the offence committed or abetted is triable.	The abettor liable to the same punishment as if no such misconception, &c. existed.	
100	When anything is done in consequence of previous abetment which would be a certain offence, but for the youth, &c. of the doer, or for some misconception on his part from which the abettor is free.	According as the offence to which the contemplated act, if committed without such exceptional circumstances, would have amounted, is bailable or not.	By the Court by which the contemplated act when an offence is triable.	See Clause 88.	
101	A public servant concealing by any act or illegal omission a design to commit any offence which it is his duty to prevent, if that offence is committed.	See 96 -	See 96 - - -	Imprisonment of either description to ½ of the longest term of imprisonment for that offence, or fine, or both.	
102	Concealing by any act or illegal omission a design to commit any offence punishable with rigorous imprisonment for one year or upwards, if the offence is committed.	Idem -	Idem - - -	See Clause 93.	
105	Subsequent abetment by intentionally omitting to give information of an offence committed, as required by law.	Bailable -	Magistrate - -	Imprisonment of either description to 6 months, or fine, or both.	

106	Subsequent abetment of any offence punishable with rigorous imprisonment for one year or upwards, by causing marks of the commission of that offence to disappear.	Idem	By the Court by which the offence abetted is triable.	Imprisonment of either description to $\frac{1}{14}$ of the longest term for that offence, or fine, or both.	
107	Subsequent abetment of an offence punishable with imprisonment for 7 years or upwards by harbouring the offender to screen him from punishment. *Exception.*—Not to extend to harbour given by relations specified.	Idem	Magistrate	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
108	Subsequent abetment by assisting the offender to retain or dispose of property fraudulently acquired.	Idem	See 106	Imprisonment of either description to 1 year, or fine, or both.	
	CHAPTER V.—OFFENCES AGAINST THE STATE.				
109	Waging or attempting to wage war, or previously abetting the waging of war against the Government by instigation, conspiracy, or aid.	Not bailable	High Court or Session Court	Death, or Transportation for life, or imprisonment of either description for life, and forfeiture of all property.	
110	Previous abetment of the last offence by concealing a design to commit it.	Idem	Idem	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
111	Assaulting, &c. the Governor General of India, or the Governor, or Deputy Governor, or a Member of Council of any Presidency, to compel or restrain the exercise of his lawful powers, or attempting such offence.	Idem	Idem	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	Cumulative, Clause 112.
113	Attempting to excite disaffection to the Government.	Bailable	Idem	Banishment for life, or for any term, from the Company's Territories, to which fine may be added, or simple imprisonment to 3 years, to which fine may be added, or fine simply.	
114	Waging war, &c. against any Asiatic power in alliance with the Government.	Not bailable	Idem	Banishment, or imprisonment of either description to 3 years, to which fine may be added, or fine simply.	
115	Making preparation within the Company's Territories to commit, or to take refuge after committing depredations on the territories of any power at peace with the Government.	Idem	Idem	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine and forfeiture of specific property.	

CHAPTER VI.—OFFENCES RELATING TO THE ARMY AND NAVY.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
116	Previously abetting the commission of Mutiny by a Soldier or Sailor of the King or of the East India Company.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
117	Previous abetment of Mutiny by such a Soldier or Sailor, when Mutiny is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment of either description for life, or a term not less than 3 years; also liable to fine.	
118	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
119	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer, if the assault is committed.	Idem - -	Idem - - - -	See Clause 116.	
120	Previous abetment of the desertion of such a Soldier or Sailor.	Bailable -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
121	Previous abetment of the desertion of such a Soldier or Sailor, if desertion is committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
122	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy.	Not bailable -	Idem - - -	See Clause 116.	
123	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy, if such desertion is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment which may extend to life; also liable to fine.	
124	Subsequent abetment by harbouring such a Soldier or Sailor who has deserted. *Exception.*—Not extended to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
125	Previous abetment of a breach of Military or Naval discipline by such a Soldier or Sailor committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
126	Any person wearing any garb or carrying any token used by a Soldier in the service of the King or of the East India Company, with the intention that it may be believed that he is such a Soldier.	Idem - -	Idem - - -	See Clause 124.	

CHAPTER VII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

129	Rioting—joining or continuing in a riotous assembly.	Bailable -	Magistrate - - -	Imprisonment of either description to 6 months, or fine, or both.	Cumulative, Clause 134.
130	Rioting by joining or continuing in a riotous assembly, knowing that such assembly has been commanded to disperse.	Idem - -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	Cumulative, Clause 131.
132	Rioting, being armed with any weapon - -	Idem - -	Idem - - - -	Idem.	
133	If murder be committed in a riot by one of the rioters, every other rioter shall be punished under this Clause.	Idem - -	High Court or Session Court	Imprisonment of either description to 5 years, or fine, or both.	
135	Intentionally joining or continuing in *any* assembly of 12 or more persons, knowing that it has been commanded to disperse.	Idem -	Magistrate - -	Simple imprisonment to 1 month, or fine, or both.	
136	Malignantly and wantonly giving provocation, intending to cause rioting, if rioting be committed.	Idem - -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 137.

CHAPTER VIII.—OF THE ABUSE OF THE POWERS OF PUBLIC SERVANTS.

138	Being or expecting to be a public servant, and accepting for himself or for another any gratification as a motive for doing or forbearing to do any official act, favoring or disfavoring any party, &c.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years. or fine, or both.	
139	Accepting any gratification as a motive for inducing by personal influence any public servant to do or forbear to do any official act, &c. &c.	Idem - -	High Court or Session Court	Simple imprisonment to 6 months, or fine, or both.	
140	A public servant abetting, previously or subsequently, the offence in the last Clause with reference to himself.	Idem - -	Idem - - -	Simple imprisonment to 3 years, or fine, or both.	If any person, in doing anything whereby he commits an offence under any clause in this Chapter, also commits an offence under any clause con-
141	A Judge accepting a gift from a plaintiff or defendant in any proceeding in his Court.	Idem - -	Idem - - -	Simple imprisonment to 2 years, or fine, or both.	
142	A Judge pronouncing a decision which he knows to be unjust.	Idem - -	Idem - - -	Idem.	
143	A Judge for any purpose of favour or disfavor to any party disobeying the Law of Procedure.	Idem - -	Idem - - - -	Simple imprisonment to 1 year, or fine, or both.	

CHAPTER VIII.—Of the Abuse of the Powers of Public Servants—*continued.*

1. Clause.	2 Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
144	Any Officer authorized to commit to confinement, or keep in confinement, knowingly committing or keeping any person unjustly.	Bailable -	High Court or Session Court	See Clause 141.	tained in any other Chapter of the Penal Code, the punishment shall be cumulative. Clause 151.
145	A public servant disobeying the law for his guidance, intending to cause injury to any person or to save any person from legal punishment.	Idem - -	See 138 - - -	See Clause 143.	
146	A public servant charged with the preparation of any document, framing it incorrectly, intending to cause injury to any person, &c.	Idem - -	Idem - - -	See Clause 138.	
147	A public servant bound not to engage in trade engaging in trade.	Idem - -	Idem - - -	Simple imprisonment to 3 months, or fine, or both.	
148	A public servant bound not to purchase or bid for certain property purchasing or bidding for the same.	Idem - -	Idem - -	See Clause 147.	
149	A public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.	Idem - -	Idem - - -	Fine to 3 months' Salary; or to thrice the amount of legal fees received by him in one month, or, if paid in land, to ¼th of the annual value of such land.	
150	Wearing the garb, &c. of a public servant in order to pass off as such.	Idem - -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	

CHAPTER IX.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

1. Clause.	2 Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
152	Absconding to avoid being served with a summons or notice.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
153	Preventing the service or the affixing of any summons, or notices, or the removal of it when it has been affixed; or preventing a proclamation.	Idem - -	Idem - - -	Idem - - - - -	Cumulative, Clause 154.
155	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Idem - -	Idem - - -	Idem.	

156	Intentionally omitting to produce or deliver up any document, being legally bound to produce or deliver up the same.	Idem - -	Idem - - -	Idem.	
157	Intentionally omitting to give any notice, or furnish information on any subject as required by law.	Idem - -	Idem - - -	Idem.	
158	Knowingly furnishing false information to a public servant.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
159	Refusing to take an oath, &c. to state the truth -	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
160	Being on oath to state the truth, refusing to answer questions.	Idem - -	Idem - - -	Idem.	
161	Refusing to sign a statement made to a public servant when legally required to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
162	Knowingly stating to a public servant on oath as true that which is false.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
163	Giving false information to a public servant in order to cause him to use his lawful power to the loss or annoyance of any person.	Idem - -	Idem - - -	See Clause 158.	
164	Preventing or attempting to prevent any public servant empowered to enter or remain in any place, or make any search, or examine anything, or put any mark upon anything, from exercising such power, or causing annoyance to him in the exercise of it.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine of Rupees 500, or both.	Cumulative, Clause 165.
166	Resisting the taking of any property by the lawful authority of a public servant.	Idem - -	Idem - - -	See Clause 159 - - -	Cumulative, Clause 167.
168	Obstructing a sale held under lawful authority -	Idem - -	Idem - - -	See Clause 152 - - -	Cumulative, Clause 169.
170	Bidding for property at a lawfully authorized sale on account of a person under a legal incapacity to purchase it, or bidding without intending to perform the obligations incurred thereby.	Idem - -	Idem - - -	Imprisonment of either description to 1 month, or fine, or both.	
171	Any person resisting the lawful taking into custody of himself or of any other.	Idem - -	Idem - - -	See Clause 159 - - - -	Cumulative, Clause 172.
173	Rescuing or attempting to rescue any person from lawful custody.	Idem - -	Idem - -	See Clause 59 - - - -	Cumulative, Clause 174.
175	Escaping from lawful custody, or attempting to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine, or both.	Cumulative, Clause 176.

CHAPTER IX.—Contempts of the lawful Authority of Public Servants—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
177	Harbouring a person to prevent his being taken into lawful custody. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rs. 200, or both.	
178	Harbouring a person escaped from custody - *Exception.*—As in Cl. 177.	Idem -	Idem - - -	Imprisonment of either description to 2 months, or fine to Rs. 500, or both.	
179	Insulting or interrupting a public servant in the discharge of his duty.	Idem -	Idem - - -	See Clause 164 - - - -	Cumulative, Clause 180.
181	Intentionally omitting to give assistance to a public servant as directed by law.	Idem -	Idem - - -	See Clause 177.	
182	Disobeying the local order of a public servant, if such disobedience cause danger to human life, health, or safety, or any obstruction or annoyance to persons lawfully employed, or rioting, or risk of rioting.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 183.
184	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 185.
186	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 187.

CHAPTER X.—OFFENCES AGAINST PUBLIC JUSTICE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
190	Giving or fabricating false evidence - -	Bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
191	Giving or fabricating false evidence to cause any person to be convicted of a capital offence.	Not bailable -	Idem - - -	To transportation for life or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	
192	Giving or fabricating false evidence to cause any person to be convicted of an offence punishable with imprisonment for more than 7 years.	Idem -	Idem - - - -	The punishment of that offence.	

193	Removing, concealing, &c. any property to prevent its being taken as a forfeiture, or in satisfaction of a fine under a sentence, or in execution of a decree.	Bailable	Magistrate	Imprisonment of either description to 1 year, or fine, or both.	
194	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Idem	Idem	Idem.	
195	In a declaration which a Court of Justice is bound to receive as evidence, knowingly stating as true that which is false touching a material point.	Idem	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
196	Fraudulently or for annoyance instituting a civil suit without just grounds.	Idem	Idem	See Clause 193.	
197	Insulting or interrupting a Court of Justice	Idem	Magistrate	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 198.
199	Threatening any person to induce him to refrain from instituting or defending any civil suit, or from taking any legal steps in such a suit, or from giving evidence in any judicial proceeding.	Idem	Idem	See Clause 195	Cumulative, Clause 200.
201	Escaping or attempting to escape from custody under a lawful sentence.	Not bailable	Idem	See Clause 195	Cumulative, Clause 202.
203	Returning from transportation not for life	Idem	High Court or Session Court	Transportation for life, also liable to fine.	
204	Returning from transportation for a term of years, and banishment for life, under a commuted sentence.	Idem	Idem	Idem.	
205	Returning from banishment for a term	Idem	Idem	Transportation which may extend to 7 years and banishment for life.	
206	Harbouring any person escaped from custody under sentence, or returned from transportation or banishment. *Exception.*—Not to extend to harbouring by relations specified.	Bailable	Magistrate	Simple imprisonment to 6 months, or fine to Rupees 1,000, or both.	
207	Having accepted a conditional remission of punishment, and violating the condition.	Not bailable	High Court or Session Court	Punishment of original sentence, or if part undergone, the residue.	

CHAPTER XII.—Offences relating to Coin—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
240	Having any counterfeit Coin, known to be such when it came into possession, and delivering, &c. the same to any person with the intention that it shall pass as genuine.	Not bailable -	High Court or Session Court	See Clause 232.	
241	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
242	Delivering, &c. to any person any Coin as genuine, knowing it to be counterfeit.	Idem -	Magistrate - - -	Fines to 10 times the value of the genuine Coin.	
243	Possessing counterfeit Coin, knowing it to be such when it came into possession, intending that it may pass as genuine.	Idem -	High Court or Session Court	See Clause 232.	
244	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
245	A person employed in a Mint intentionally causing by any act or omission any Coins issued therefrom to be of a weight or composition different from that fixed by law.	Idem -	High Court - -	Idem.	
246	Diminishing the weight or altering the composition of any Coin intending that it shall pass as unaltered.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 1 year, minimum 3 months, also liable to fine.	
247	The same as to the King's or Company's Coin -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 1 year, also liable to fine.	
248	Possessing any implement or material intending to employ the same for committing an offence under any of the three last preceding Clauses.	Idem -	Idem - - -	See Clause 246.	
249	Possessing Coin altered as in Clause 246, having known it to be so altered when it came into possession, and delivering, &c. the same to any person with intention that it may pass as unaltered.	Idem -	Idem - - -	Idem.	
250	The same with respect to the King's or Company's Coin.	Idem -	Idem - - - -	See Clause 247.	

251	Possessing Coin, known when it came into possession to have been dealt with as in Clause 246, intending to cause the same to be in circulation.	Idem -	Idem - - -	See Clause 246.	
252	The same with respect to the King's or Company's Coin.	Idem -	Idem - - - -	See Clause 247.	

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

253	Fraudulently using a false balance - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.	
254	Fraudulently using a false weight or measure -	Idem -	Idem - - -	Idem.	
255	Having a false balance, weight or measure for fraudulent use.	Idem -	Idem - - - -	Idem.	
256	Making a false balance, weight or measure for fraudulent use.	Idem -	Idem - - -	Idem.	

CHAPTER XIV.—OFFENCES AFFECTING PUBLIC HEALTH, SAFETY, AND CONVENIENCE.

257	Malignantly or wantonly doing any act known to be likely to spread the infection of a dangerous disease.	Bailable -	Magistrate - - -	Imprisonment of either description to 6 months, or fine, or both.	
258	Knowingly disobeying any rule of the Quarantine laws.	Idem -	Idem - - -	Idem.	
259	Adulterating food or drink intended for sale so as to make the same noxious.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	
260	Selling any food or drink as wholesome knowing the same to be noxious.	Idem -	Idem - - - -	Idem.	
261	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
262	Offering for sale or issuing from a Dispensary any drug or medical preparation known to have been adulterated.	Idem -	Idem - - - -	Idem.	
263	Knowingly selling or issuing from a Dispensary any drug or medical preparation as a different drug or medical preparation.	Idem -	Idem - - -	Idem.	

CHAPTER XIV.—Offences affecting Public Health, Safety, and Convenience—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
264	Causing the atmosphere in any public way to be noxious or offensive.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
265	Driving or riding on a public way so rashly or negligently as to indicate a want of due regard for human life.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 2,000, or both.	
266	Navigating any vessel so rashly or negligently, &c.	Idem -	Idem - - - -	Idem.	
267	Conveying for hire any person in a vessel in such a state, or so loaded, as to endanger his life.	Idem -	Idem - - -	Idem.	
268	Dealing with any poisonous substance so rashly or negligently as to indicate a want of due regard for human life.	Idem -	Idem - - - -	Idem.	
269	Dealing with fire or any combustible matter so rashly or negligently, &c.	Idem -	Idem - - -	Idem.	
270	So dealing with any explosive substance -	Idem -	Idem - - - -	Idem.	
271	So dealing with any machinery - - -	Idem -	Idem - - -	Idem.	
272	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Idem -	Idem - - - -	Idem.	
273	A person omitting to take order with any animal in his possession so as to guard against danger to human life or of grievous hurt from such animal.	Idem -	Idem - - -	Idem.	
274	Causing danger, obstruction, or annoyance in any public way or line of navigation.	Idem -	Idem - - - -	Fine to Rupees 200.	

CHAPTER XV.—OFFENCES RELATING TO RELIGION AND CASTE.

275	Destroying, damaging, or defiling a place of worship or sacred object with intention to insult the religion of any class of persons.	Bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
276	Causing a disturbance to an assembly engaged in religious worship, and assaulting or threatening any person engaged in such worship.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 277.

278	Disturbing a religious assembly in a place of worship.	Idem	Idem	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 279.
280	Trespassing in a place of sepulture, offering indignity to a human corpse, or disturbing a funeral with intention to wound the feelings or to insult the religion of any person.	Idem	Idem	See Clause 278	Cumulative, Clause 281.
282	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Idem	Idem	Idem.	
283	Doing or threatening to do any act with intention to cause it to be believed that some person is thereby rendered an object of divine displeasure, &c. &c.	Idem	Magistrate	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
284	Committing an assault with intention to cause a person to lose caste, or inducing him to do something ignorantly whereby he will incur loss of caste.	Idem	Idem	Imprisonment of either description to 6 months, fine to Rupees 2,000, or both.	
285	Intentionally causing the food of a person to be in a state in which he, according to his religion or caste, cannot use it.	Idem	Idem	Fine to Rupees 50.	
286	If the last offence is repeated after a conviction	Idem	Idem	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	
	CHAP. XVI.—ILLEGAL ENTRANCE INTO AND RESIDENCE IN THE TERRITORIES OF THE EAST INDIA COMPANY.				
287	A subject of the King, not a native of the Company's Territories, omitting on his arrival by Sea in those Territories to report his name, place of destination, and object of pursuit.	Bailable	Magistrate	Fine to Rupees 1,000.	
288	A subject of the King, not a native of the Company's Territories, entering the said Territories by land without legal authority.	Idem	Idem	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
289	A subject of the King, &c. entering or residing in a certain part of the said Territories without the licence required by law.	Idem	Idem	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
290	Repeating the last offence after conviction	Idem	High Court or Session Court	Banishment for life or for any term, or simple imprisonment to 1 year, to which fine may be added.	

CHAPTER XVII.—OFFENCES RELATING TO THE PRESS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
291	Possessing a Printing Press not having made and subscribed the declaration required by law.	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine to Rupees 5,000, or both.	
292	Printing or publishing any book, &c., without the name of the Printer and Publisher and the place of printing and publishing.	Idem -	Idem - - -	Idem.	
293	Printing, &c. any Newspaper, &c. contrary to law	Idem -	Idem - - -	Idem.	

CHAPTER XVIII.—OFFENCES AFFECTING THE HUMAN BODY.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
300	Murder - - - -	Not bailable -	High Court or Session Court	Death, or Transportation for life, or rigorous imprisonment for life, also liable to fine.	
301	Manslaughter - - - -	Idem -	Idem - - -	Imprisonment of either description to 14 years, or fine, or both.	
302	Voluntary culpable homicide by consent -	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
303	Voluntary culpable homicide in defence -	Idem -	Idem - - -	See Clause 301.	
304	Causing death by an act or illegal omission so rash or negligent as to indicate a want of due regard for human life.	Idem -	Idem - - -	Imprisonment of either description to 2 years, a fine, or both.	Additional, Clause 305.
306	Previous abetment by aid of Suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Idem -	Idem - - -	See Clause 300.	
307	Previously abetting by aid the commission of Suicide.	Idem -	Idem - - -	See Clause 302.	
308	Doing any act, &c. with such intention, &c. that if death ensued it would be murder, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Transportation for life, or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	

309	Doing any act, &c. with such intention, &c. that if death ensued it would be voluntary culpable homicide, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
311	Being a Thug - - - -	Idem -	Idem - - -	Transportation for life, or imprisonment of either description for life, also liable to fine.	
	Causing Miscarriage.				
312	A woman causing herself to miscarry, or any person causing a woman to miscarry.	Bailable -	High Court or Session Court	See Clause 309.	
313	Committing the offence in the last Clause without the woman's consent.	Not bailable -	Idem - - -	The punishment of miscarriage in excess of any punishment incurred by reason of any hurt caused to the woman.	
	Of Hurt.				
318	Causing hurt, except as in Clause 325 -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
319	Causing grievous hurt, except as in Clause 326 -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 10 years, minimum 6 months, also fine.	
320	Causing hurt in an attempt to commit murder -	Idem -	Idem - - -	See Clause 308.	
321	Causing hurt for the purpose of extortion, &c. -	Idem -	Idem - - -	Rigorous imprisonment maximum 14 years, minimum 1 year, also liable to fine.	
322	Causing grievous hurt for the purpose of extortion, &c.	Idem -	Idem - - -	See Clause 308.	
323	Causing hurt (except as in Clause 325) by a sharp instrument, or by fire, &c., or by any corrosive or explosive substance, or by any substance deleterious to inhale or swallow, or by means of any animal.	Idem -	Magistrate - - -	See Clause 309.	

CHAPTER XVIII.—Offences affecting the Human Body—*continued:* Of Hurt—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
324	Causing grievous hurt (except as in Clause 326) by any of the means described in the last Clause.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
325	Causing hurt on grave and sudden provocation, not intending to hurt any other but the person who gave the provocation	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
326	Causing grievous hurt as in last Clause -	Idem -	High Court or Session Court	Imprisonment of either description to 1 year, or fine to Rupees 2,000, or both.	
327	Causing grievous hurt by an act or illegal omission so rash or negligent as to indicate a want of regard for the safety of others.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 328.
329	Any act or illegal omission intended, &c. to cause grievous hurt, the causing of which would be an offence other than that defined in Clause 326, and carrying it to a length at the time contemplated as sufficient to cause grievous hurt.	Not bailable -	Idem - - -	Imprisonment of either description to half the term the offender would have been liable to, had he caused the grievous hurt intended, or fine, or both.	

Wrongful Restraint and Confinement.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
332	Wrongfully restraining any person - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
333	Wrongfully confining any person - -	Idem -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
334	Wrongfully confining for 3 days or more -	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
335	Wrongfully confining for 10 days or more -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, in addition to 3 days for every day of such wrongful confinement, minimum 6 months in addition to 1 day for every day of such wrongful confinement, also liable to fine.	

336	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Idem -	Idem - -	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any term of imprisonment to which the offender may be liable under Clause 335, also liable to fine.	
337	Wrongful confinement for the purpose of extortion, &c.	Idem -	Idem - -	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any imprisonment under either of the last two Clauses, also liable to fine.	
338	While keeping a person in wrongful confinement, omitting to furnish him with anything necessary to prevent danger of death or hurt.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
			Assault.		
342	Assault otherwise than on grave and sudden provocation.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
343	Assault in attempt to commit murder - -	Not bailable -	High Court or Session Court	See Clause 308.	
344	Assault in attempt to commit kidnapping -	Idem -	Idem - - -	Imprisonment of either description, maximum half the term of imprisonment for kidnapping, minimum 6 months, also liable to fine.	
345	Assault in attempt to cause grievous hurt otherwise than on grave and sudden provocation.	Idem	Idem - - -	Imprisonment of either description to ½d the term for grievous hurt, or fine, or both.	
346	Assault on a woman in attempt to commit rape -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
347	Assault on a woman with intent to outrage her modesty.	Bailable -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	
348	Assault on a person with intent to dishonour him otherwise than on grave or sudden provocation.	Idem -	Idem - - -	Imprisonment of either description to 2 years, or fine, or both.	
349	Assault on a person in attempt to commit theft on any property he may be wearing or carrying.	Not bailable -	Idem - - -	Idem.	
350	Assault on a person in attempt to wrongfully confine him.	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	

CHAPTER XVIII.—Offences affecting the Human Body—*continued*: Assault—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
351	Assault on a person on grave and sudden provocation given by that person.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	
352	Making show of assault except on grave and sudden provocation.	Idem -	Idem - - -	Idem.	
			Kidnapping.		
355	Kidnapping - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
356	Kidnapping intending or knowing that murder may be committed in consequence.	Idem -	Idem - - -	See Clause 308.	
357	Kidnapping intending or knowing that the consequence may be grievous hurt or rape, &c.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
358	Being in charge of a vessel and permitting a person to embark on board for a place not within the Company's Territories without a legal order or permit.	Bailable -	Magistrate - -	Simple imprisonment to 1 month for every person so embarked, or fine to Rupees 200 for every person, or both.	
			Rape.		
360	Rape - - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
			Unnatural Offences.		
361	Unnatural offences - - - -	Not bailable -	High Court or Session Court	See Clause 360.	
362	Unnatural offences without consent - -	Idem -	Idem - - -	Imprisonment of either description, maximum for life, minimum 7 years, also liable to fine.	

CHAPTER XIX.—OFFENCES AGAINST PROPERTY.

364	Theft - - - -	Not bailable -	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	Rigorous imprisonment to 3 years, or fine, or both.	
365	Theft within any building, tent, or vessel used as a human dwelling, or any building used for the custody of property, in pursuance of a conspiracy in which any person residing or employed within and any person not so residing or employed are engaged.	Idem -	Idem - - -	Rigorous imprisonment, maximum 3 years, minimum 6 months, also liable to fine.	
366	Theft on a letter or packet in possession of an Officer of the Post Office.	Idem -	Idem - - -	Idem.	
367	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Idem -	High Court or Session Court	Rigorous imprisonment, maximum 7 years, minimum 1 year, also liable to fine.	
			Extortion.		
369	Extortion - - - -	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
370	Putting or attempting to put in fear in order to extortion.	Idem -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
371	Extortion by putting a person in fear, for himself or for another, of death or grievous hurt.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	

CHAPTER XIX.—Offences against Property—*continued*: Extortion—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
372	Putting or attempting to put a person in fear, for himself or for another, of death or grievous hurt, in order to extortion.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
373	Extortion by putting a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust.	Idem -	Idem - - -	See Clause 371.	
374	Putting or attempting to put a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust in order to extortion.	Idem -	Idem - - -	See Clause 372.	
	Robbery and Dacoity.				
377	Robbery - - - -	Not bailable -	High Court or Session Court	Rigorous imprisonment, maximum 14 years, minimum 2 years, also fine.	Cumulative, Clause 382.
378	Attempt to commit robbery - - -	Idem -	Idem - - -	Rigorous imprisonment, maximum 7 years, minimum 1 year, also fine.	Cumulative, Clause 382.
379	Dacoity - - - - -	Idem -	Idem - - -	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also fine.	Cumulative, Clause 382.
380	Murder in dacoity, where 6 or more engaged in committing it.	Idem -	Idem - - -	Death, or transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also fine.	
381	Being one of 6 or more persons assembled for dacoity.	Idem -	Idem - - -	See Clause 378.	
	Criminal Misappropriation of Property not in Possession.				
384	Criminal misappropriation of property not in possession.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 2 years, or fine, or both.	

385	Criminal misappropriation of property not in possession, knowing that it was in possession of a deceased person at his death, and has not since been in the possession of any person legally entitled to it.	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
	Criminal Breach of Trust.				
387	Criminal breach of trust	Bailable	High Court or Session Court	Imprisonment of either description to 3 years, or fine, or both.	
388	Criminal breach of trust by a public servant in the Post Office Department by misappropriating letters, &c. entrusted to him.	Idem	Idem	See Clause 385.	
	Receiving Stolen Property.				
390	Fraudulently receiving stolen property knowing it to be stolen.	Not bailable	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	See Clause 387.	
391	Fraudulently receiving stolen property knowing it was obtained by dacoity.	Idem	High Court or Session Court	See Clause 379.	
	Cheating.				
394	Cheating	Bailable	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.	
395	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Idem	Magistrate	Imprisonment of either description to 2 years, or fine, or both.	
396	Cheating by personation	Idem	Idem	Idem.	
397	Attempting to cheat by personation	Idem	Idem	See Clause 394.	

CHAPTER XIX.—Offences against Property—*continued*: Cheating—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
	Fraudulent Insolvency.				
398	An Insolvent Trader fraudulently removing or concealing or delivering or transferring to any party any property to prevent the distribution of that property among his creditors.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
	Mischief.				
400	Mischief - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Fine to 10 times the wrongful loss thereby caused.	
401	Mischief, having taken precaution not to be detected.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
402	Mischief thereby causing wrongful loss to Rupees 5 or upwards.	Idem -	Idem - - - -	Idem.	
403	Mischief thereby causing wrongful loss to Rupees 100 or upwards.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
404	Mischief intending to enhance the value of any article, or to affect the event of any competition for the gain of any person.	Idem -	Idem - - - -	Idem.	
405	Mischief with intent to insult or annoy the person to whom wrongful loss is intended.	Idem -	Idem - - -	Idem.	
406	Mischief by killing, wounding, or poisoning any animal to the value of Rupees 10.	Idem -	Idem - - - -	Imprisonment of either description to 3 years, or fine, or both.	
407	Mischief on any channel or reservoir of water with intent, &c. to cause diminution of cultivation of agricultural produce, or a failing of the supply of water required for food, drink, &c., or for carrying on any manufacture.	Idem -	Idem - - -	Idem.	
408	Mischief on any road, bridge, or navigable channel with intent, &c. to render it less safe or easy to travel.	Idem -	Idem - - - -	Idem.	

409	Mischief with intent, &c. to cause an inundation attended with loss to Rupees 100 or upwards.	Idem -	Idem - - -	Idem.	
410	Mischief on any lighthouse or buoy with intent, &c. to render the same less useful.	Idem -	Idem - - - -	Idem.	
411	Mischief on any landmark with intent, &c. to render it less useful.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
412	Mischief by fire with intent, &c. to destroy property not within a building to the value of Rupees 100 or upwards.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also liable to fine.	
413	Mischief by fire with intent, &c. to destroy any building used as a dwelling or for the custody of property.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
414	Mischief by fire with intent, &c. that buildings used as dwellings to the number of 5 may be consumed.	Idem -	Idem - - - -	Transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also liable to fine.	
415	Mischief on any decked vessel with intent, &c. to destroy it or render it unsafe.	Idem -	Idem - - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
416	Mischief, having made preparation for causing death, hurt, or wrongful restraint, or fear of death, hurt, or wrongful restraint, while committing or attempt to commit or retiring after committing such mischief.	Idem -	Idem - - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 417.
	Criminal Trespass.				
425	Criminal Trespass - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
426	House Trespass - - - -	Not bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	Cumulative, Clause 427.
428	House Trespass in order to any offence punishable with death or transportation for life.	Idem -	High Court or Session Court	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also liable to fine.	
429	House Trespass in order to any offence punishable with imprisonment.	Idem -	The High Court or Session Court, if the offence intended is triable by those Courts exclusively; otherwise by the Magistrate.	Imprisonment of either description to 1 year, added to ⅓d of the longest term for the offence intended, or fine, or both.	

CHAPTER XIX.—Offences against Property—*continued*: Criminal Trespass—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5 Penalty.	6. When admitting of cumulative Punishment.
430	House Trespass, having made preparation for causing hurt, assault, &c.	Not bailable -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
431	Lurking house trespass or house breaking -	Idem -	Idem - - -	Idem - - - - -	Cumulative, Clause 432.
433	Lurking house trespass or house breaking in order to committing an offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 2 years, added to ½ the longest term of imprisonment for the offence intended, and not less than ½ the shortest term, also liable to fine.	
434	Lurking house trespass or house breaking, having made preparation for causing hurt or assault, &c.	Idem -	Magistrate - - -	Imprisonment of either description, maximum 3 years, minimum 3 months, also liable to fine.	
435	Lurking house trespass, &c. by night - -	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	Cumulative, Clause 436.
437	Lurking house trespass, &c. by night, in order to any offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 3 years, added to ⅔ds of the longest term of imprisonment for the offence intended and not less than the shortest time, also liable to fine.	
438	Lurking house trespass, &c. by night having made preparation for causing hurt, &c.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also fine.	
439	Criminal trespass by opening any closed receptacle for property so as to damage it, or by opening any lock.	Idem -	Magistrate - -	See Clause 430.	
440	Being entrusted by law or under a contract with any closed receptacle for property, committing criminal trespass by opening the same with a fraudulent intention by any means by which it is damaged, or by opening any lock.	Idem -	Idem - - -	See Clause 435.	

CHAPTER XX.—OFFENCES RELATING TO DOCUMENTS.

443	Committing Forgery, or using a forged document as genuine.	Not bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
444	Forging or falsifying a valuable security, or using the forged document as genuine.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
445	Forging a document, or using a forged document as genuine for the purpose of cheating.	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
446	Forging a document, or using a forged document as genuine, to harm the reputation of any party.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
447	Making any apparatus or material for engraving, or any seal, for the purpose of committing forgery.	Idem -	Idem - - -	See Clause 444.	
448	Possessing any plate, or material, or implement for engraving, or any seal, for the purpose of forgery.	Idem -	Idem - - -	Idem.	
449	Possessing any forged document purporting to be a valuable security intending that it may be used as genuine.	Idem -	Idem - - -	Idem.	
450	Possessing anything not a document, but which has been marked by forgery, intending that it may be made a document purporting to be a valuable security and may be used as genuine.	Idem -	Idem - -	Idem.	
451	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will.	Idem -	Idem - - -	Idem.	
452	Fraudulently destroying or defacing or secreting a valuable security.	Idem -	Idem - - -	See Clause 446.	
453	A public servant in the Post Office Department opening any letter, &c. containing any document, without legal authority.	Bailable -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	
454	Any person opening a fastened letter, &c. containing a document, knowing that it does not belong to him, &c.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CHAPTER XXI.—OFFENCES RELATING TO PROPERTY MARKS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
456	Making any counterfeit property mark, or using such as genuine.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
457	Counterfeiting any property mark affixed by the lawful authority of any public servant, or using such counterfeit as genuine to cause injury to some party.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
458	Making or using any counterfeit property mark for the purpose of cheating.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
459	Putting any property mark on any property, or using the same for the purpose of cheating.	Idem -	Idem - - -	See Clause 456.	

CHAPTER XXII.—ILLEGAL PURSUIT OF LEGAL RIGHTS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
460	Taking property from a person, not fraudulently but to satisfy a just debt, under such circumstances that if the intention were fraudulent the act would be theft or robbery.	Bailable -	High Court or Session Court	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 462.
461	Taking property as in the last Clause, and *keeping* the same *fraudulently*.	Idem -	Idem - - -	The punishment to which the offender would have been liable had the taking been fraudulent.	

CHAPTER XXIII.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
463	Being bound by contract to convey or conduct any person or property from one place to another, and illegally omitting to do so.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
464	A Seaman bound to serve in a merchant vessel leaving it, or absenting himself from it, or disobeying the order of any officer thereof.	Idem -	Magistrate - -	Imprisonment of either description to 3 months, or fine to Rupees 100, or both.	
465	Being bound to attend on or supply the want of a person who is helpless from youth, unsoundness of mind, or disease, and illegally omitting to do so.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CHAPTER XXIV.—OFFENCES RELATING TO MARRIAGE.

466	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also fine.	
467	A woman committing the same offence with a man.	Bailable -	Idem - -	Simple imprisonment to 1 year, or fine, or both.	
468	A person with fraudulent intention going through the ceremony of being married knowing that he is not thereby lawfully married.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	

CHAPTER XXV.—DEFAMATION.

479	Defamation - - - -	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine, or both.	
480	Being the possessor of machinery by which defamatory matter has been printed or engraved at the time the printing or engraving was done.	Idem -	Idem - - -	Idem.	
481	Being the first seller of the printed or engraved substance by which defamation is committed.	Idem -	Idem - - -	Idem.	

CHAPTER XXVI.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

483	Criminal intimidation - - -	Bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
484	Criminal intimidation, having taken precaution to conceal whence the threat comes.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
485	Uttering any word, or making any sound or gesture, or exhibiting any object, to insult any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
486	Uttering any word, &c. to insult the modesty of any woman.	Idem -	Magistrate - -	See Clause 483.	
487	Uttering any word, &c. malignantly and wantonly to annoy any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
488	Appearing in a public place, &c. in a state of intoxication, and causing annoyance to any person.	Idem -	Idem - - - -	Simple imprisonment to 24 hours, or fine to Rupees 10, or both.	

We humbly submit this our first Report to Your Majesty's Royal Consideration.

JOHN ROMILLY.	(L.S.)
JOHN JERVIS.	(L.S.)*
EDWARD RYAN.	(L.S.)
C. H. CAMERON.	(L.S.)†
JOHN M. MACLEOD.	(L.S.)‡
T. F. ELLIS.	(L.S.)*
ROBERT LOWE.	(L.S.)

* See Minute, Appendix D. No. 2. † See Minute, Appendix D. No. 3.
‡ See Minute, Appendix D. No. 1.

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APPENDIX A.

Appendix A.

India Board,
November 30th, 1853.

Gentlemen,

The duty of your Commission under the Statute is to examine and consider the recommendations of the Indian Law Commissioners, and the enactments proposed by them, for the reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other matters relating thereto as may be referred to you, by or with the sanction of the Commissioners for the Affairs of India.

It seems desirable that, in the execution of this duty, your attention should be directed in the first instance to those questions on which it is expedient that legislation, either in this country or in India, should take place with as little delay as possible.

The intention of amalgamating the Supreme and the Sudder Courts in each of the Presidencies has already been announced to Parliament; and the first matters which we are anxious that you should take into your consideration are those preliminary measures which will be necessary for this purpose.

You are aware that the Supreme Court exercises jurisdiction of various kinds, and the forms of procedure in each differ, from each other, as does that ordinarily in use in the Sudder Court from the practice of the Supreme Court.

It is obviously most desirable that a simple system of pleading and practice, uniform as far as possible throughout the whole jurisdiction, should be adopted, and one which is also capable of being applied to the administration of justice in the Inferior Courts of India. The embarrassment will thus be avoided which a diversity of procedure throws in the way of an appellate jurisdiction; and the proceedings in the new Court will be a pattern and guide to the inferior tribunals in the mofussil.

Your first duty, therefore, should be to address yourselves to the preparation of such a code of simple and uniform procedure.

Another indispensable preliminary to the amalgamation of the two highest Courts would seem to be the formation of a subordinate Court in the presidency towns, which may relieve the new Court of so much of its original jurisdiction as to leave sufficient time for the transaction of its appellate business.

You will then have to consider the amalgamation of the Supreme and Sudder Courts.

When you will have matured the detailed measures necessary for this purpose, and completed your Report thereupon, I shall address you again, and from time to time, as to the subjects to which this Board may wish you to direct your attention.

I have the honour to be,
Gentlemen,
Your most obedient humble servant,
(Signed) CHARLES WOOD.

The Commissioners appointed to consider the Reform of the Judicial Establishment, &c. of India.

APPENDIX B.—No. 1.

Appendix B.
No. 1.

Outline of the Constitution and Procedure of Her Majesty's Supreme Courts of Judicature at Calcutta, Madras, and Bombay.

There is a Supreme Court of Judicature at each of the three Presidency towns of Calcutta, Madras, and Bombay.

The first charter to the East India Company which contained any provision for the administration of justice is that of the 13th Charles II., which empowered the Company to appoint governors and other officers to govern their plantations, forts, fortifications, factories, or colonies, and authorized the Governor and Council so appointed to judge all persons belonging to the said Governor and Company, or that should live under them, in all causes, whether civil or criminal, according to the laws of the kingdom, and to execute judgment accordingly.

By the 35th Charles II. the Company were empowered to erect Courts of Judicature, "consisting of a person learned in the civil laws and two merchants, who were to decide "according to equity and good conscience, and according to the laws and customs of "merchants." And similar provisions were contained in the subsequent charters down to the period of the union of the old and new companies.

By the first charter granted to the united Company, which was that of the 13th George I. in 1726, a Mayor's Court was established at each of the settlements, "to be a court of "record, to try, hear, and determine all civil suits between party and party that should "arise within the towns of Madras, Bombay, and Calcutta, or within any of the factories "subject thereto, against all persons then residing, or who at the time of action accrued "did or should reside or be within the said towns, or the precincts, districts, or territories "thereof, and to determine according to justice and right."

APPENDIX B.
No. 1.

From the decisions of this Court an appeal was given to the Governor and Council, whose decision was declared to be final in all suits under 1,000 pagodas*, but if the suit exceeded that amount a further appeal was given to the King in Council.

A pagoda is about 8 shillings.

The criminal jurisdiction was given to the Governor and Council, who were appointed justices of the peace, with power to hold Courts of Quarter Sessions, and Oyer and Terminer and Gaol Delivery, for the trial of all offences, except treason, committed within the said towns, or within any of the factories subordinate or within ten miles of the same. They were also empowered to grant probates of wills.

By the charter of the 26th George II., upon the surrender of the previous charter, the Mayor's Court and the Court of Oyer and Terminer and Gaol Delivery were again established at the three settlements, and similar provisions made, with this difference,—that the native inhabitants of the respective towns were excepted from the civil jurisdiction of the Mayor's Court, unless with their own consent, and the criminal jurisdiction of the Court of Oyer and Terminer was limited to the trial of offences committed within the said towns or within any of the factories or places subordinate thereto, the words "or within ten miles of the same" being left out.

A Court of Requests was also established, to which natives were liable for suits under 5 pagodas.

THE SUPREME COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

By the Act 13th George III. c. 63, so much of the said charter as related to the establishment of the Mayor's Court at Calcutta was cancelled, and His Majesty was empowered to grant a charter or letters patent for the erection of a Supreme Court of Judicature at Fort William in Bengal, to consist of a Chief Justice and three other Judges, being barristers of England or Ireland, of not less than five years' standing. And the Supreme Court was accordingly constituted by Royal Charter dated the 6th March 1774. By the 37th George III. c. 142, s. 1, the number of judges was reduced to a Chief Justice and two other Judges, and the Court now consists of that number, the qualification of the judges being the same.

The Court exercises civil and criminal jurisdiction, the former under the different heads of Common Law, Equity, Ecclesiastical, and Admiralty, and the latter as a Court of Oyer and Terminer.* The judges are also Commissioners of the Court for Relief of Insolvent Debtors, established by the Act 9th George IV. c. 73.

* The jurisdictions are technically termed sides of the Court: as the Crown Side, the Common Law Side.

The Supreme Court appoints its own ministerial officers; and the same persons may hold offices on different sides of the Court at the same time. The officers are paid by salaries. The whole annual expense of the Court is 471,248 rupees, of which 208,367 rupees are for the salaries of the judges, and 262,880 for the salaries of the officers and other expenses attending their establishments. This is exclusive of the emoluments of the Registrar, who is paid by a commission on the estates of persons dying intestate.

The Court is also authorized by its charter to admit and enrol such and so many advocates and attornies as shall seem meet; and no other persons but such advocates and attornies are allowed to plead or act for the parties.

General Rules.
No. 1.
No. 2.

The general qualification for an advocate of the Supreme Court is, that he shall produce a certificate of having been called to the bar in England or Ireland, or of being entitled to practise as an advocate in the principal courts of Scotland, except the judges shall see fit to dispense with the same.

The qualification for admission as an attorney is, that the applicant has been admitted an attorney of one of Her Majesty's Principal Courts of Record in England or Ireland, or a writer to the Signet in Scotland, or a member of the Society of Solicitors practising before the Court of Session there, or that he has served a regular clerkship of five years, under a contract in writing to some attorney practising in the Court, or that he is or has been a principal clerk to one of the judges.

The advocates and attornies practise on all sides of the Court, under the same professional designations as in England.

JURISDICTION.

The local jurisdiction of the Supreme Court is limited to the town of Calcutta, which for this purpose is bounded on the west side by the river Hooghly, and on the other sides by what is called the Mahratta ditch. Within these limits the Court exercises all its jurisdictions, civil and criminal, over all persons residing within them, with the exception of its ecclesiastical jurisdiction, which has not been applied to Hindoos and Mohamedans beyond the granting of probates of wills.

Charter, s. 19.
Stat. 21 Geo. III. c. 70. s. 17.

The persons residing within these limits, and therefore subject to the local jurisdiction of the Supreme Court, are computed, according to the latest information, at 413,182.

Charter, s. 13.

Secondly. In like manner the Court exercises all its jurisdictions over all British-born subjects, that is, persons who have been born within the British islands, and their descendants, who are resident in any of the provinces which are comprehended within the Presidency of Bengal, or the subordinate Government of Agra. The number of persons so subject to the jurisdiction of the Court, including the members of the covenanted services, civil and military, but exclusive of the Queen's troops and their families, was on the 30th March 1851, according to the Parliamentary census returns, 22,387.

Thirdly. All persons resident at any places within the said provinces, who have a

dwelling-house and servants in Calcutta, or a place of business there where they carry on any trade, through their agents or servants, are held to be constructively inhabitants of Calcutta for the purpose of liability to the common law and equity jurisdictions of the Court.

Fourthly. Natives of India, within the said provinces, who have bound themselves upon any contract or agreement in writing with any British subject, where the cause of action exceeds the sum of 500 rupees, to submit to the jurisdiction of the said Court, are subject to its jurisdiction in disputes relating to the said contract. Charter, s. 13.

Fifthly. In like manner, persons who avail themselves of the Court's jurisdiction for any purpose, are held liable to its jurisdiction in the same matter, even on other sides of the Court than that of which they have availed themselves; as, for instance, persons who have applied for and obtained probates of wills, are held liable to the Court's equity jurisdiction for the due administration of the estate.

Sixthly. All persons who, at the time of action brought or cause of action accrued, are or have been employed by, or directly or indirectly in the service of the East India Company, or any British subject, are liable to the civil jurisdiction of the Court in actions for wrongs or trespasses, and also in any civil suit by agreement of parties in writing to submit to the jurisdiction of the said Court; and all persons who, at the time of committing any crime, misdemeanor, or oppression, are or have been employed, or directly or indirectly in service as aforesaid, are liable to the criminal jurisdiction of the Court. Charter modified by Act 21 Geo. III. c. 70. s. 10.

Seventhly. The Admiralty jurisdiction of the Court extends over the provinces of Bengal, Behar, and Orissa, and all other territories and islands adjacent thereto, which at the date of the charter were or ought to be dependent thereon, and comprehends all causes civil and maritime, and all matters and contracts relating to freights, or to extortions, trespasses, injuries and demands whatsoever between merchants or owners of ships and vessels employed or used within the jurisdiction aforesaid, or other persons, contracted, done, and commenceced in or by the sea, public rivers, or creeks, or within the ebbing and flowing of the sea about and throughout the said three provinces and territories. The criminal jurisdiction extends to all crimes committed on the high seas by any person or persons whatsoever in as full and ample a manner as the jurisdiction of any other Court of Admiralty in any colony or settlement belonging to the Crown. Charter, s. 26. Charter explained by Act 33 Geo. III. c. 52. s. 156. and 53 Geo. III. c. 155. s. 110.

Lastly. The Supreme Courts at Calcutta, Madras, and Bombay have criminal jurisdiction over all British subjects for crimes committed at any place within the limits of the Company's Charter, that is, any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, or for crimes committed in any of the lands or territories of any Native Prince or State, in the same way as if the same had been committed within the territories subject to the British Government in India. Charter, s. 19. 23 Geo. III. c. 67. s. 29. 33 Geo. III. c. 52. s. 66.

Law.

The Law administered in all cases, except as herein-after mentioned, is as follows:

First, The Common Law as it prevailed in England in the year 1726, and which has not subsequently been altered by Statutes especially extending to India, or by Acts of the Legislative Council of India.

Secondly, The Statute Law which prevailed in England in 1726, and which has not subsequently been altered by Statute especially extending to India, or by the Acts of the Legislative Council of India.

Thirdly, The Statute Law expressly extending to India, which has been enacted since 1726, and has not been since repealed, and the Statutes which have been extended to India by the Acts of the Legislative Council of India.

Fourthly, The Civil Law as it obtains in the Ecclesiastical and Admiralty Courts.

Fifthly, Regulations made by the Governor-General in Council, previously to the 3d & 4th Will. IV. c. 85, and registered in the Supreme Court, and the Acts of the Legislative Council of India made under the 3d & 4th Will. IV. cap. 85.

The exceptions are Hindoos and Mahomedans in the following cases: Stat. 21 Geo. III. c. 70. s. 17.

First, Actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which both parties are Hindoos. Such cases are to be determined by the laws and usages of Hindoos.

Secondly, Actions of the same kind where both parties are Mahomedans, and in these the case is to be determined by the laws and usages of Mahomedans.

Thirdly, Actions of the same kind where only one of the parties is a Mahomedan or Hindoo; and these are to be determined by the laws and usages of the defendant.

Procedure.

The procedure on the different sides of the Court is similar to the procedure of the corresponding Courts in England, with this difference, that as directed by the charter the *vivâ voce* examinations of witnesses are taken down in writing, and the depositions are signed by the witnesses. The new rules in law and equity passed from time to time in this country are quickly adopted by the judges in India, as far as circumstances will admit, and applied with the requisite modifications to their own practice. Charter, s. 13.

Appendix B.
No. 1.

NATURE OF SUITS.

The suits are generally of the same description as in England; those on the common law side being very similar to the cases at *nisi prius*. They are tried, however, without a jury, the judges determining both fact and law; though the latter, when points are raised, is commonly reserved, as in England, for further argument. Calcutta is a commercial town, almost all the European inhabitants, with the exception of the Company's servants and professional persons, being engaged in commerce. The common law suits are therefore much of the mercantile character, the equity suits are most commonly between natives, and then generally relate to wills, or the succession to intestate estate, or the partition of joint property, and frequently involve questions of Hindoo law, and matters of account.

Order in Council, 10th April 1838.

In all suits, where the property in dispute is of the value of 10,000 rupees, there is an appeal to Her Majesty in Council. When a suit is appealed, it is the practice for the appellant to take two examined copies of the whole proceedings, including the depositions of the witnesses, which are committed to some trustworthy person, usually the master of a ship, to be delivered to the proper officer in this country.

THE SUPREME COURT OF JUDICATURE AT MADRAS.

So much of the charter of 1726 as related to the Mayor's Court at Madras, or to the President and Council, as a Court of Appeal therefrom, or of Oyer and Terminer and Gaol Delivery, was cancelled by the Act 37 Geo. III. c. 142; and by virtue of letters patent, issued in pursuance of the Act, a Court of Record was established within the settlement of Madras, called the Court of the Recorder of Madras, with such civil, criminal, and ecclesiastical jurisdiction, and with such powers and authorities, as in the said letters patent mentioned.

The Recorder's Court at Madras was abolished by the Act 40 Geo. III. c. 79; and by letters patent, dated the 26th December 1800, and issued in pursuance of the Act, the Supreme Court of Judicature at Madras was established, to be a Court of Record, and consist of a Chief Justice, and two other judges, who should be barristers in England or Ireland of not less than five years' standing.

The Court has generally the same powers, and its jurisdictions are generally the same, within the Settlement of Madras, as those of the Supreme Court of Judicature at Fort William within the territories attached to the Presidency of Bengal and Sub-presidency of Agra.

The local jurisdiction of the Court is confined to the town of Madras, which for this purpose is held to be bounded by the sea on the east, the Saint Thomé river on the south, the banks of the Long Tank and the Nungumbaukum Tank, with the villages of Kilpaukum and Peramboor on the west, and a line from the latter village to the sea on the north, and to comprise all the lands included in the villages of Chettapet, Kilpaukum, Peramboor, and Tandear. The inhabitants of Madras within these limits are computed at about 720,000.

The British subjects residing within the provinces attached to Madras, and subject to the Jurisdiction of the Supreme Court, were on the 30th March 1851, according to the Parliamentary Census Returns, 15,133, including the civil and military members of the covenanted services, but exclusive of the Queen's troops. The Court's civil jurisdiction extends to British subjects within any of the dominions of the native Princes of India in alliance with the Government of Madras, but the number of these must be very small, and cannot be taken into calculation.

THE SUPREME COURT OF JUDICATURE AT BOMBAY.

So much of the charter of 1726 as related to the Mayor's Court at Bombay, or to the President and Council as a Court of Appeal, or of Oyer and Terminer and Gaol Delivery for the town and island of Bombay and the limits thereof, was cancelled by the Act 37 Geo. III. c. 142; and by virtue of letters patent issued in pursuance of the Act, a Court of Record was established within the settlement of Bombay, called the Court of the Recorder of Bombay, with the civil and criminal jurisdiction in the letters patent mentioned.

The Recorder's Court at Bombay continued till the 4th Geo. IV. c. 71, when it was superseded by letters patent, bearing date the 8th of December 1823, and issued in pursuance of the Act, constituting the Supreme Court of Judicature at Bombay to be a Court of Record, and consist of a Chief Justice and two other judges, who should be barristers of England or Ireland of not less than five years' standing.

The local jurisdiction of the Court is confined to the Island of Bombay, the inhabitants of which are computed at 566,119.

The British-born subjects who reside within the provinces comprised in the Presidency of Bombay, including the covenanted servants of the Company, were on the 30th March 1851, according to the Parliamentary Census Returns, 10,704, exclusive of the Queen's troops.

The Supreme Courts at Madras and Bombay have generally the same powers, and their jurisdictions are generally the same within the settlements of Madras and Bombay, as those of the Supreme Court of Judicature at Fort William within the territories attached to the Presidency of Bengal and Sub-presidency of Agra.

APPENDIX B.—No. 2.

Appendix B. No. 2.

Outline of the Constitution and Powers of the Justices of the Peace and Magistrates of the Presidency Towns of India.

By sec. 37, of 13 Geo. 3, c. 63, the Governor General in Council, and the Chief Justice and other judges of the Supreme Court, were respectively declared to be, and to have full power and authority to act as Justices of the Peace for the Settlement of Fort William; and the Governor General and Council were authorized and empowered to hold Quarter Sessions four times in every year, such Court of Quarter Sessions to be a Court of Record.

By sec. 151, of 33 Geo. 3, c. 52, power was given to the Governor General in Council of Fort William, by Commissions, to be issued under the Seal of the Supreme Court there, to appoint Justices of the Peace for the Provinces and Presidencies of Fort William or Calcutta, Fort St. George or Madras, and Bombay. The 47 of Geo. 3, Sess. 2, c. 68, sec. 6, repeals so much of the above section as authorizes the Governor General in Council to appoint Justices of the Peace for Madras and Bombay, that authority being given to the Governors in Council of the respective Presidencies.

By the 13th and 47th of Geo. 3, above cited, the Governor General in Council, and the Governors in Council of Madras and Bombay, were respectively empowered to make rules, ordinances, and regulations for the good order and government of the Presidency Towns, subject to the previous condition of being duly registered and published in the Supreme or Recorder's Court, as the case might be. In the exercise of this power, the Governments of the various Presidencies enacted from time to time regulations authorizing and empowering Justices of the Peace to take cognizance of, and to punish certain offences. This continued until the 3 & 4 William 4, c. 85, came into operation in the year 1834. By sec. 43, of that statute, powers of legislation for the whole of India were conferred upon the Governor General in Council; and by sec. 45, the necessity for the registration of the legislative provisions for the Presidency Towns was done away with; and thenceforth the Acts of the Supreme Government of India contain the provisions which regulate the jurisdiction and powers of the Justices of the Peace for the Towns of Calcutta, Madras, and Bombay.

Sec. 158, of 33 Geo. 3, c. 52, provided that the Justices of the Peace for the three Presidency Towns should be empowered to take measures for cleansing, watching, and repairing the streets, and to make assessments to the extent laid down in the Act, to defray the expenses of the same. It would appear that the Courts of Quarter Sessions were held only for the purposes of making this assessment.

In virtue of the powers vested in them the local Governments at the Presidencies of India appointed Justices of the Peace and Magistrates for the towns of Calcutta, Madras, and Bombay, whose powers and jurisdiction were defined by Acts of Parliament and by rules and regulations passed by the local Government, and registered in the Supreme Court; and after the enactment of 3 & 4 Will. 4, c. 85, by Acts of the Indian Government.

In addition to the Court of the Magistrates for the town of Bombay, there is a Court of Petty Sessions, which sits weekly for the despatch of business. Its origin has not been traced, but it arose probably out of a recommendation made to the Government of Bombay by Sir James Mackintosh, in the year 1811.

Before proceeding to notice the provisions by which particular offences are declared to be cognizable by the Justices of the Peace, it may be observed that the powers of punishment conferred by previous regulations had for the most part been exercised by two Justices. By Act IV. of 1835, however, it was provided that "all powers whatever in "criminal cases which, by virtue of any law now in force, may be exercised by two Justices "of the Peace for the town of Calcutta, shall be exercised by one such Justice;" and by Act I. 1837, it was declared lawful for one Justice of the Peace to issue a warrant of distress for the recovery of arrears of assessment accruing under the Act of 33 Geo. 3, cap. 52. These provisions were extended to Madras by Act IX. of 1849. The powers exercised by the Police Authorities at Bombay are noticed below. Act IV. 1835. Act IX. 1849.

Enactments which are applicable to all the Presidency Towns.

By the Act 9 George 4, cap. 74, the powers of the Justices of the Peace were much enlarged in regard to the admission to bail of persons charged with felony; and in cases of misdemeanor it was made obligatory upon them to take the examination of the defendant and witnesses. Powers of summary conviction in certain cases were conferred upon them.

"By the 75th section, it is enacted that persons having in their possession more than "five pieces of counterfeit coin without lawful excuse, the proof of which lies on the "party accused, may be convicted before one Justice of the Peace, who may fine or "imprison in the manner therein pointed out. By section 91, persons in possession of "shipwrecked goods, of which they are not able to give a satisfactory account, may be "convicted before a Justice of the Peace, and punished as that clause directs. By "section 92, persons offering shipwrecked goods for sale, who cannot satisfy a Justice "that they came lawfully by them, may be convicted and punished by one Justice of

APPENDIX B. No. 2.

"the Peace. By section 97, the stealing of dogs, or beasts, or birds, ordinarily kept in "a state of confinement and not being the subject of larceny at common law, is an "offence of which a party being convicted before a Justice of the Peace, and for the "first offence, shall forfeit over and above the value of the dog, beast, or bird, such sum "of money, not exceeding two hundred rupees, as to the Justice shall seem meet; for "a second offence of this description, the party offending is liable to be committed to the "gaol or house of correction, there to be kept to hard labour for such term, not exceed- "ing twelve calendar months, as the convicting Justice shall think fit. By the 39th "section, if any person shall aid, abet, counsel, or procure the commission of any "offence which is by this Act punishable on summary conviction, he is liable on con- "viction before a Justice of the Peace to the same forfeiture or punishment as the "principal offender. By the 113th section it is enacted, that where the stealing or taking "of any property whatsoever is by this Act punishable on summary conviction, any "person who shall receive such property, knowing the same to be unlawfully come by, is "liable to be punished before a Justice of the Peace, in the same manner as the person "originally stealing or taking such property."*

The Justices of the Peace at all the Presidency Towns have the same powers of punishment, in the following cases:—

Act XVII. 1837. Offences against an Act for the better regulation of the post office, punishable by fine from 50 to 1,000 rupees, except in cases of fraudulent appropriation of postage duty, and certain other specified cases of fraud, when the punishment is by imprisonment not exceeding two years, and also by fine.

Act XXXI. 1838, sec. 29. Stealing any growing tree, plant, &c., or wilfully damaging property, punishable for the first offence by forfeiture not exceeding 50 rupees above the amount of the injury done, and for the second by imprisonment not exceeding six months.

Act XXII. 1840. Offences against an Act for preventing vagrants extorting alms by offensive and disgusting exhibitions, &c., by imprisonment not exceeding three months.

Act XV. 1842, ss. 4, 9, 10, 11, 13. Act XXI. 1844, ss. 10, 11, 14. Offences against Acts for regulating the emigration of the inhabitants of the territories under the government of the East India Company to the Island of Mauritius, Jamaica, British Guiana, and Trinidad, punishable by fine to the extent of 5,000 rupees, in certain cases of fraud, and in other cases to be regulated by the number of emigrants unlawfully taken on board; and in cases of crimping, by fine not exceeding 500 rupees, or six months' imprisonment.

Act V. 1844. Offences against an Act for the suppression of lotteries, punishable, in the case of keeping a place for the drawing of any lottery, &c., by fine not exceeding 5,000 rupees; and in the case of subscribing to or doing anything towards the drawing of a lottery, by fine not exceeding 1,000 rupees.

Act XIX. 1850. Offences against an Act "concerning the binding of apprentices," punishable when on the part of the master by fine not exceeding 200 rupees; and on the part of the apprentice by private whipping or close confinement.

Act XXVII. 1850. Act XXVIII. 1850. Offences against an Act for the registry of merchant seamen, by fine from 50 to 100 rupees; and against an Act for the encouragement of merchant seamen, by forfeitures and penalties not exceeding 500 rupees, or six months' imprisonment.

SPECIAL RULES.

Calcutta.

Justices of the Peace, as such, or in virtue of their appointments as magistrates of the town of Calcutta, are empowered to take cognizance of, and to punish, in the following cases:—

Act XII. 1837. Offences against an Act for preventing the building of houses and outhouses with outer roofs of combustible materials.

Act XII. 1852, s. 41, &c. Offences against an Act to confer certain powers on the Commissioners for the Improvement of the Town of Calcutta.

In the above cases the punishment is by fine not exceeding 200 rupees.

Act XI. 1849. Offences against an Act for better securing the revenue arising from the sale of spirituous liquors, opium, &c., in Calcutta.

Act XIII. 1849. Offences against an Act for preventing the smuggling of salt into Calcutta.

Act XXIII. 1850, s. 9. Obstructing or molesting the Collector of the Land Revenue of Calcutta, or any of his subordinate officers in the execution of their duty.

Punishable by fine not exceeding 500 rupees.

Acts XXI. 1839, III. 1842. By Acts XXI. of 1839, and III. 1842, the Justices of the Peace were authorized to punish on conviction of simple larceny and petty theft, in which the property does not exceed twenty rupees; and in cases of assault and battery on merchant ships in the river Hooghly. The powers conferred by these Acts were greatly extended by an Act for con-

Act XIII. 1852. solidating and amending the Regulations of the Calcutta Police, passed by the Government of India in the year 1852.

The whole of the regulations passed by the Government, and registered in the Supreme Court, under the provisions of sec. 36, 13 Geo. 3, c. 63, were thereby repealed, and enlarged jurisdiction, and powers of punishment, were conferred on the Magistrates. The following is an abstract of the offences declared by this Act to be punishable by them, and of the punishments within their competency to inflict:—

* Sir E. Ryan's Charge to the Grand Jury of Calcutta, 13th April, 1829.

Neglecting to make provision for maintenance of wife and children, by imprisonment not exceeding two months.

Having or conveying stolen goods, without being able to account for the same, by fine not exceeding 100 rupees, or imprisonment not exceeding three months.

Larceny to the value of 50 rupees, or receiving stolen property when the value does not exceed 50 rupees, or being accessory to any felony punishable by a Justice of the Peace; by imprisonment not exceeding six months, or in the case of a boy under sixteen years of age, by corporal punishment not exceeding fifteen stripes.

Assault, forcible entry, or other injury, not being felony; by fine not exceeding 100 rupees, or imprisonment not exceeding four months.

Keeping open houses of public entertainment without licence; by fine not exceeding 100 rupees for every day the house is kept open.

Parties not conforming to the tenor of their licence; by fine not exceeding 100 rupees, and forfeiture of their licence.

Permitting disorderly conduct, and illegal harbouring of deserters, in houses of public entertainment; by fine not exceeding 100 rupees.

Retailing spirituous liquors within certain hours; by fine not exceeding 25 rupees, and forfeiture of licence.

Introduction of spirituous liquors into Fort William, or the Great Gaol, or House of Correction of Calcutta; by fine not exceeding 50 rupees, or imprisonment not exceeding two months.

Breaking gaol; by imprisonment not exceeding three months.

Being found drunk, or riotous, or indecent behaviour in any street, &c.; by fine not exceeding 20 rupees, or imprisonment not exceeding fourteen days.

Rogues and vagabonds found under specified circumstances; by imprisonment not exceeding four months.

Begging, or exhibiting sores, &c., or seeking alms by false pretences; by imprisonment not exceeding two months.

Furious driving; by fine not exceeding 50 rupees, or in default imprisonment not exceeding one month.

Driving at night without lights to vehicle; by fine not exceeding 50 rupees, or in default, by imprisonment not exceeding one month.

Keeping a common gaming house; by forfeitures and fine not exceeding 100 rupees, or imprisonment not exceeding three months.

Being found in a common gaming house; by fine not exceeding 50 rupees.

Gambling in the streets; by fine not exceeding 50 rupees, or imprisonment not exceeding one month.

Using false or defective weights and measures; by forfeiture and fine not exceeding 20 rupees, or imprisonment not exceeding one month.

Desertion or unauthorized absence from their ship, of seamen: Justice of the Peace may arrest and return to their vessel.

Unauthorized carrying of arms: parties may be arrested and arms forfeited.

Obstructing the police in the regulation of carriages and persons at places of public resort; by fine not exceeding 100 rupees.

Police officers taking bribes; by fine not exceeding 500 rupees, or imprisonment not exceeding three months.

Manufacturing or keeping gunpowder without licence; by forfeiture and fine not exceeding 500 rupees.

Breach of conditions of licence for keeping gunpowder; by forfeiture and fine not exceeding 200 rupees.

Breach of provisions of licence for the transit and carrying of gunpowder from one place to another; by fine not exceeding 50 rupees.

Violation, by commanders of merchant vessels, of the regulations for deposit of gunpowder at fixed stations below Calcutta; by forfeiture and fine not exceeding 200 rupees. Jurisdiction of the Justices of the Peace for the town of Calcutta extends over all seagoing vessels in any part of the river Hooghly.

False or malicious charge or arrest; by an award not exceeding 50 rupees, to be paid by the informer to the party informed against.

Complaints of offences against this Act to be summarily heard and determined.

The police reports for the town of Calcutta, for the years 1851 and 1852, give the following results:—

——	1851.	1852.
Number of Cases brought before the Magistrates	1,454	1,372
Number of Persons apprehended	1,854	1,664
Committed for trial	249	211
Convicted	159	170
Acquitted	89	38
Convicted by the Magistrates	1,031	997
Released by ditto	574	446

Appendix No. 2.

Among those committed for trial before the Supreme Court were 36 persons in 1851, and 5 in 1852, charged with theft of property to the value of between 20 and 50 rupees. By Act XIII. 1852, power was given to the magistrates to dispose of such cases; and hence the falling off in the latter year.

The above is taken from the statements forwarded from the police office in Calcutta, which, however, must give but a very faint idea of the work actually done. There is not in the return a single case of petty assault, or drunkenness, or any of those cases of a trifling nature which are constantly occurring in a large, densly populated city, calling for the interference of the police.

Madras.

Information in regard to Madras, to the same extent as is accessible to the Commission in regard to Calcutta, has not been obtained. There is the same authority for the establishment of a Police and the appointment of Justices of the Peace at Madras as at Calcutta, but the rules and regulations of the Governor in Council are not forthcoming, nor are there any returns of the work transacted by the Magistrates of the Presidency town. Judging from the Acts of the Government of India passed since the year 1834, the Magistracy of Madras would appear to be much on the same footing as that of Calcutta, the head of the Police being known at the former place as the Superintendent of Police, and at the latter as Chief Magistrate.

The provisions of the Acts No. XXI. 1839 and III. 1842, above cited, as enacted for the trial and punishment of certain larcenies within the town of Calcutta, and assaults on board of merchant ships in the river Hooghly, have been extended to Madras and the Madras Roads by Act VIII. of 1849.

Act IV. 1842. By Act IV. of 1842 the Justices of the Peace for the town of Madras are empowered to punish by fine, ranging from 10 to 100 rupees, offences against the provisions thereby enacted for the better management of boats and catamarans in the Madras Roads. And

Act XIX. 1852. also by Act XIX. 1852, to punish offences against the provisions for securing the Abkaree revenue at Madras, by fine from 50 to 500 rupees, and imprisonment not exceeding six months.

Bombay.

By Rule, Ordinance, and Regulation I. of 1834, provision was made for the appointment by the Governor in Council of Bombay of two Magistrates, being Justices of the Peace, and for the assembling on Thursday in every week of the Court of Petty Sessions. The Court was to consist of not less than three Justices of the Peace, one of them being a Magistrate, one an European, one a Native, to be attended by a Barrister as Assessor,* being a Justice of the Peace, an Advocate of the Supreme Court, and appointed by the Governor in Council. It was to exercise the power of summary conviction and punishment according to the course pursued by two Justices of the Peace in certain cases under authority of statutes, and a like jurisdiction generally over all acts done in violation of the rules legally passed by the Governor in Council for the good order and government of the Presidency, in respect of which no other jurisdiction was exclusively provided; and was also empowered to levy pecuniary forfeitures and penalties imposed by them by distress and sale of goods and chattels where not otherwise provided.

Misconduct by constables was by this rule made punishable by the magistrates, by fine not exceeding three months' wages, or suspension or dismission; and by Court of Petty Sessions, by dismissal, or corporal punishment not exceeding twelve lashes, or imprisonment not exceeding two months.

The Court of Petty Sessions were authorized to take cognizance of, and to punish on conviction, for offences against the following Rules, Ordinances, and Regulations, passed by the Governor in Council, and registered in the Supreme Court:—

R. O. R. II. 1812. R. O. R. II. 1812, for regulating the sale of spirituous liquors.

Art. 22 and 24. R. O. R. III. 1812. Article 22 and 24, R. O. R. III. 1812, against depositing certain articles on the road, and burning bricks or lime within the town.

R. O. R. I. 1813. R. O. R. I. 1813, for neglecting to maintain families, and for non-registration of names by aliens.

R. O. R. II. 1813. R. O. R. II. 1813, for preventing animals straying or trespassing on the streets.

R. O. R. XV. 1815. R. O. R. XV. 1815, for preventing the introduction of combustible materials, and encroachments on the streets of the town of Bombay, &c.

R. O. R. I. 1818. R. O. R. I. 1818, for regulating the width of wheels of carts, &c. &c.

R. O. R. III. 1827. R. O. R. III. 1827, for regulation of the House of Correction.

Reg. XIX. 1827. Regulation XIX. 1827, for assessment and collection of the land revenue of Bombay.

Reg. XXI. 1827. Regulation XXI. 1827, for collecting the customs on opium and other specified articles.

R. O. R. I. 1828. R. O. R. I. 1828, against leaving cotton and other heavy goods on piers and quays.

* So much of the Rule, Ordinance, and Regulation as enacts that the Court of Petty Sessions shall be attended by a barrister as assessor has been repealed by Act II. 1854.

Justices of the Peace have jurisdiction in the following cases:—

Offences against a Rule for deciding disputes between masters and servants.

Offences against a Rule relating to ballast for ships. R. O. R. I. 1814.

Offences against a Regulation for the realization of the Abkaree revenue of Bombay. R. O. R. I. 1818. Reg. X. 1833.

The whole of the foregoing offences were made punishable by fine and imprisonment, and in some cases by whipping.

The only Rule, Ordinance, and Regulation which remains to be noticed, is that numbered II. of 1827, with its modifications by Act III. 1841, enacted by the Supreme Government of India. By these the Court of Petty Sessions is empowered to try summarily persons charged with the commission of simple larceny, or with receiving stolen goods, provided the property does not exceed the value of 20 rupees, and to punish on conviction by imprisonment for a period not exceeding twelve months. It may also punish rogues and vagrants, by imprisonment not exceeding one month, and impostors by fine not exceeding 50 rupees or one month's imprisonment; also persons going armed, or found in certain places without satisfactory account, by fine not exceeding 100 rupees or four months' imprisonment, or twenty-four stripes; also insults or disturbances of religious ceremonies, and violation of orders for the restriction of dangerous processions, by fine not exceeding 100 rupees or three months' imprisonment; also the importation of slaves into Bombay, and the abduction of females under thirteen years of age, by fine not exceeding 500 rupees or six months' imprisonment. R. O. R. II. 1827. Act III. 1841.

By the provisions of the same enactments, a single magistrate may exercise the power of summary conviction in the following cases:—

Simple larceny to 10 rupees value, punishable by imprisonment not exceeding six months, and stripes not exceeding twenty-four lashes.

Having in possession implements of housebreaking, by fine not exceeding 200 rupees, or imprisonment not exceeding three months.

Riots, forcible entries, and assaults, by fine not exceeding 100 rupees, or imprisonment not exceeding three months.

Certain offences against the public communication, by fine not exceeding 50 rupees, or fourteen days' imprisonment.

Non-registry of certain trades; permitting assaults, &c. in taverns, &c.; and buying and selling military uniforms, &c., by fine not exceeding 50 rupees, or fourteen days' imprisonment.

Carrying dangerous weapons, by fine not exceeding 20 rupees, or fourteen days' imprisonment.

Vending poisonous substances, by fine not exceeding 50 rupees, or one month's imprisonment.

Violations of orders for the restriction of noisy processions at night, and discharge of fire-arms, by fine not exceeding 20 rupees, or fourteen days' imprisonment.

The Court of Petty Sessions have jurisdiction in the following cases, under Acts of the Council of India:—

Offences against an Act for the regulation of buildings in the Islands of Bombay and Colaba, punishable by fine not exceeding 500 rupees.* Act XXVIII. 1839.

Obstructing a magistrate in the discharge of his duties, under an Act for the better regulation of markets, by fine not exceeding 200 rupees, or three months' imprisonment. Act XIV. 1841. s. 2.

Offences against an Act for the abatement of nuisances, by fine not exceeding 200 rupees. Act XIV. 1842.

Offences against an Act for the prevention of gambling, viz.: for keeping a gaming house, by fine not exceeding 1,000 rupees, or imprisonment for six months; and for gaming, by fine not exceeding 500 rupees, or three months' imprisonment. Act IX. 1851.

Offences against an Act for the suppression of fraudulent practices in the cotton trade, by fine not exceeding 1,000 rupees. Act XV. 1851.

The Magistrates have jurisdiction in the following cases, under Acts of the Council of India:—

Offences against an Act for the regulation of public conveyances, punishable by fine from 10 to 20 rupees. Act IV. 1841.

Offences against an Act for the better regulation of markets, by fine not exceeding 300 rupees. Act XIV. 1841.

Offences against an Act for regulating the Bombay ferries, by fine from 10 to 500 rupees. Act XXXV. 1850.

Offences against an Act relating to the railway of Bombay, by fine from 20 to 50 rupees. Act III. 1853.

APPENDIX B. No. 2.

The Police Reports for the town and island of Bombay, for the years 1851 and 1852, give the following results:—

—	1851.	1852.
Number of offences reported - - - - -	6,473	7,499
Number of persons apprehended - - -	9,883	11,641
Commitments to the Supreme Court in cases -	120	100
Number of persons committed to the Supreme Court	214	134
Convicted - - - - - - - -	148	104
Acquitted - - - - - - - -	69	28
Commitments to the Petty Sessions in cases -	472	440
Number of persons committed to the Petty Sessions	801	756
Convicted - - - - - - - -	319	438
Acquitted - - - - - - - -	485	326
Summarily punished by the Magistrate in cases -	2,991	3,871
Number of persons punished - - - - -	4,338	5,742
Discharged in cases - - - - - -	2,703	2,937
Number of persons discharged - - - - -	4,464	4,978

APPENDIX B. No. 3.

APPENDIX B.—No. 3.

OUTLINE of the CONSTITUTION and PROCEDURE of the EAST INDIA COMPANY'S COURTS of CIVIL JUDICATURE in the PRESIDENCY of BENGAL.

THE JUDGES.

THERE are two orders of Judges: covenanted and uncovenanted.

The covenanted are appointed from the members of the civil service, and are either civil and sessions judges of zillahs, or judges of Sudder Dewanny Adawlut.* Zillahs are large divisions of country; and there is one civil and sessions judge in each zillah. Sometimes, but rarely, an additional judge is appointed when there are heavy arrears of business. The Sudder Dewanny Adawlut is the principal Court of Appeal, and there is one such court at each of the presidency towns of Calcutta, Madras, and Bombay; and one at Agra for the north-western provinces. These courts are composed of from three to six English judges.

The uncovenanted judges are generally natives, that is, Hindoos or Mahomedans, with a small admixture of East Indians, who are Christians. Of this second order there are three grades: Moonsiffs†, Sudder Ameens‡, and Principal Sudder Ameens. Of the first there are several in a zillah; the number varies; in some cases it is as high as twenty. Each has a sub-district of his own, to which his local jurisdiction is confined. Of each of the others there is only one in a zillah, though an additional Principal Sudder Ameen is occasionally appointed. Of these native judges the local jurisdiction is commensurate with that of the civil and sessions judge, extending over the whole zillah.

OFFICERS AND PLEADERS.

There are ministerial officers and authorized pleaders or *vakeels* § in all the courts. The former are appointed by each judge in his own court, but when once appointed they cannot be displaced without sufficient cause. The latter in the zillahs are all appointed by the civil and sessions judge; in the Sudder Dewanny Adawlut, by the judges of that court; when once appointed they cannot be removed without sufficient cause.

Construction No. 802.

The Moonsiffs are stationed at some distance from the Zillah Judge, and have vakeels attached to their respective Courts. There is no distinction between the vakeels of the Zillah Judge, Principal Sudder Ameen, and Sudder Ameen; or rather, they are all in fact the vakeels of the judge, who are permitted to practise before the subordinate tribunals. It has, however, been found convenient to apportion a certain number to each court separately.

* The words are Arabic. *Sudur* means chief or first of anything, *dewan* a seat or tribunal, and *adawlut* justice. *Dewanny* is generally used in India to signify the Civil Government.

† Arab., Judge, from *insaf*, justice; literally, dividing in half.

‡ Arab., A trustee. Officers deputed on any special duty are commonly termed Ameens.

§ Arab., General word for agent or attorney.

APPENDIX B. No. 3.

REMUNERATION OF PLEADERS.

The vakeels in all the courts were originally remunerated by a commission on the value of the property in the suit, which was five per cent. up to the value of 5,000 rupees; it then diminished rapidly, until the value rose to 80,000 rupees, when the vakeel's fee was 1,000 rupees; it never exceeded the last sum, whatever might be the value of the property in dispute. Now the remuneration of the vakeel is left entirely to agreement between him and his client. When costs are awarded to one party against another in suits decided on the merits, the amount to be paid for vakeel's fees is calculated according to the above rates; when costs are awarded in other cases, the amount to be paid for vakeel's fees is one-fourth of the same rates. Costs are not in the discretion of the judge, as the regulation directs that in all cases they are to be paid *to* the successful party. Act 1 of 1846. Reg. 4 of 1793, sec. 1

JURISDICTION.

The Moonsiff has primary jurisdiction in all cases where the value of the property in dispute is not more than 300 rupees. Reg. 5 of 1831, sec. 5.

The Sudder Ameen has primary jurisdiction in all cases where the value of the property in dispute is above 300 rupees and not more than 1,000 rupees. Idem, sec. 15.

The Principal Sudder Ameen has primary jurisdiction in all cases where the value of the property in dispute is above 1,000 rupees. Act No. 25 of 1837.

The Zillah Judge has the power of withdrawing any case from the files of the Sudder Ameen and Principal Sudder, for sufficient reason, and trying it himself. With this exception, his jurisdiction is wholly appellate. Act 9 of 1844, sec. 2.

From all decisions of the Moonsiffs and Sudder Ameen there is an appeal to the Zillah Judge. But if from the state of his files he should deem it impracticable to dispose of all the appeals before him, he may report the matter to the Sudder Dewanny Adawlut, and obtain its permission to refer a specified number of the cases to the Principal Sudder Ameen. He ought, however, to retain enough of them on his own file to enable him to judge how business is conducted by the Moonsiffs and Sudder Ameens. Reg. 5 of 1831, sec. 16, cl. 2.

From all decisions of the Principal Sudder Ameen, where the value of the property in dispute is between 1,000 rupees and 5,000 rupees, there is an appeal to the Zillah Judge; where the value is above 5,000 rupees, the appeal is to the Sudder Dewanny Adawlut. This, and the appeal from the Moonsiffs and Sudder Ameen, is called the regular appeal, and it goes to the whole merits of the case. But there is a further or special appeal to the Sudder Dewanny Adawlut from all decisions on regular appeals in any of the civil courts subordinate to it, on any of the following grounds, viz.: 1st, Where the decision has failed to determine all material points in difference, or has determined them contrary to law or usage having the force of law. 2d, Misconstruction of any document. 3d, Ambiguity in the decision affecting the merits. 4th, Substantial error or defect in procedure apparent on the record, and likely to have produced error or defect in the decision upon the merits of the case. The order for admitting a special appeal for hearing must specify the grounds on which it was granted. But neither the Court nor the parties are confined to those grounds upon the hearing. Reg. 5 of 1831, sec. 28, cl. 2. Reg. 25 of 1837, sec. 4. Act 16 of 1853, s. 4. Sec. 8, cl. 2.

No person whatever, by reason of birth or descent, is exempted from the jurisdiction of any of the Judges before mentioned, in any civil proceeding whatever. Acts No. 11 of 1836 and No. 6 of 1843.

LANGUAGE.

The language of pleading is the vernacular of the country where the Court is held; and in the Sudder Dewanny Adawlut it is Hindoostanee. The language of so much of decrees as relates to the points to be decided, the decision, and the reasons for the decision, when the decree is that of a Principal Sudder Ameen or Moonsiff, is the vernacular of the Judge; and when the decree is that of a Zillah Court or the Sudder Adawlut, the language is English. Act No. 12 of 1843, secs. 1 and 3.

SUBJECTS OF SUITS.

The subjects of suits are various. Much the largest number is for debts; and next to these are suits for the rent of land; but as the right to land is not tried in the form of an action for rent, these may perhaps be added to the cases for debt. The suits of every description decided by Moonsiffs in the Lower Provinces, in the year 1850, were 84,081. Of these, 49,646 were for debt, and 16,041 for rent, making together 65,687, or about seventy-seven per cent. of the whole. The suits of every description decided by the Sudder Ameens in the same time were 1,670; of which 701 were for debt, and 446 for rent, making together 1,147, or about seventy per cent. of the whole. And the suits of every description decided by the Principal Sudder Ameens in the same year were 2,546; while those for debt were 755, and those for rent 567, making together 1,322, or about fifty per cent. of the whole. The suits next in number before the Moonsiffs are those which relate to personal property, of which there were 5,098 in the same year; but only 116 of that description were tried by the Sudder Ameens, and 182 by the Principal Appendix to Report from Select Committee of the House of Commons on Indian Territories, 1852, p. 644.

APPENDIX No. 3.

Sudder Ameens. The right to land under different heads*, but chiefly in disputes about boundaries, was the subject of 4,629 suits before the Moonsiffs, 317 before the Sudder Ameens, and 734 before the Principal Sudder Ameens. There is a remarkable absence of what may be called commercial suits; for though 2,967 suits relating to indigo, sugar, silk, and other staples were decided by all the Judges in the same year, 2,949 of them were decided by the Moonsiffs; and it is probable that they were chiefly disputes between the planters, or manufacturers of those staples, and the ryots, or peasantry of the country.

PROCEDURE.

All suits, whatever their nature or value, and wherever tried, are treated in the same manner; and the practice of the courts is more similar to that of the courts of equity than of common law. It is, however, nearer to the Scotch than to any English system.

Reg. 10 of 1829, Schedule B.

The suit commences with a plaint, which must be on stamped paper, varying in amount according to the value of the property in dispute. Up to 300 rupees, the limit of the Moonsiff's jurisdiction, the stamp is a little more than five per cent., being sixteen rupees on that sum. On sums between that and 800 rupees it is thirty-two rupees. The rate then decreases until the suit is for a lakh of rupees, or 10,000*l.*, when it is 1,000 rupees; and above a lakh of rupees, the stamp is 2,000 rupees, which sum it never exceeds, whatever be the value of the property in dispute.

Reg. 2 of 1806, sec. 2.

When the plaint has been filed, a short summons or notice is issued, calling on the defendant to appear in person, or by one of the vakeels of court. The summons is served by an officer called the *Nazir*† (usually through an inferior servant called a *peon*); and the defendant is required to indorse on the summons an acknowledgment of the receipt of service. Where the defendant evades process, or cannot be found, a proclamation is fixed up at his usual place of residence, and also in the court-room, warning him that if he fails to appear the suit will proceed *ex parte*; and it does so if he neglect the warning.

Idem, sec. 4.

The defendant is not called upon to give security for his appearance; but if at any stage of the case it be brought to the notice of the Judge, and he is satisfied that the defendant is about to abscond and withdraw himself from the jurisdiction, he may be called upon for security to abide the event of the judgment, and kept in close custody till security is given or the suit is decided.

A reasonable time is allowed for putting in the answer, and it may be extended if the Judge think proper. The answer is usually followed by a reply, which ought to be filed the next court-day; but as the answer may contain fresh matter, some time is usually allowed for filing the reply. After the reply, there may be a rejoinder by the defendant, which ought to be filed the next court-day. This closes the pleadings; and where the defendant neglects to file his rejoinder the cause may proceed without it.

The pleadings subsequent to the plaint are required to be on stamped paper, except in the Moonsiffs' Courts; the stamps being eight anas‡ in the Court of the Sudder Ameen; one rupee in that of the Principal Sudder Ameen; and four rupees in the Judges' Court and in the Sudder Dewanny Adawlut.

LEADINGS.

Parties are not restricted to any particular form in their pleadings, but each tells his story in his own way. The pleadings are in consequence argumentative, and sometimes very voluminous, the plaint and answer in particular entering into a full detail of all the circumstances. It is not surprising, therefore, that they should fail to bring the parties to direct issue. But the Judge is required to hold a proceeding as soon as may be convenient after the close of the pleadings, for the purpose of settling the issues, or more properly for fixing all the points to be determined; and no evidence is received except to one of the points so fixed by the Judge.

26 of 1814, sec. 10, cl. 2. cl. 4.

The regulation referred to was passed so far back as 1814, but was very much neglected by the Lower Courts, though their attention was repeatedly called to it by the Sudder Dewanny Adawlut. But that Court has recently passed a more stringent order on the subject, and circulated a specimen form of the minute to be drawn up and recorded by the Judge on the occasion.

Circular Order of Sud. De. Adawlut, dated 8th May 1850.

The minute is to set forth, 1st, The issues (if any) raised in bar of the hearing of the

* Sale -	1,035
Gift - -	167
Mortgage -	203
Pre-emption	158
Lakhiraj -	7
Dependent Tenures	637
Arrears -	227
Boundaries -	2,195
	4,629

† The *Nazir* is the executive officer of the Court of Justice.
‡ Half a rupee, or about a shilling.

suit, as, for instance, that the Court cannot take cognizance of it, or that the valuation of the suit as laid by the plaintiff is not correct. 2d, it is to state "The material issues of "fact arising upon the pleadings, after making any necessary inquiries from the parties or "their pleaders, under clause 2, section 10, regulation xxvi. of 1814," distinguishing between the "issues on facts averred by the plaintiff, and denied by the defendant," and those "on facts averred by the defendant, and denied by the plaintiff." And it is to state, 3dly, "The material issues of *law* arising upon the pleadings with reference to the decision which may be formed upon the foregoing issues of fact."

After the points to be established have been reduced to writing, in the same way in respect of language as is required in final decrees, it is the duty of the Judge to call on the parties to file on a fixed day their exhibits, and the names of their witnesses in proof or refutation of the points set forth. This in practice is seldom done, but the parties are allowed to bring in from time to time as may be convenient their exhibits and lists of witnesses, with a petition, which states the point to prove which they are adduced. This, like all other petitions, in all but the Moonsiff's Court, must be on a stamp, and requires an order of the Judge before the documents and lists can be filed with the proceedings. The petition stamp in the Sudder Ameen's Court is eight anas, in the Judge's and Principal Sudder Ameen's one rupee, and in the Sudder Dewanny Adawlut two rupees. Act. 15 of 1850, sec. 2.

EVIDENCE.

There is very little in the old Regulations or the Acts of Government applicable to evidence. A bond must be proved by two witnesses to the signature, unless the consideration is proved. But much documentary evidence has always been received without any proof, unless objected to, such as copies of judicial proceedings appearing to be authenticated by the signature of the proper officer; and copies of English correspondence from the Collectors or other Government officers, similarly authenticated. And even copies of copies are so received. Such documents, however, are frequently the most trustworthy evidence in a case. A recent Act of the Indian Legislature, regulating the mode of taking the evidence of witnesses, has introduced the very important change of allowing parties to be examined under certain restrictions, with consent of the Judge. Reg. 3 of 1793, sec. 15.

Subpœnas are issued to the witnesses, and there are means for compelling the attendance and testimony of an unwilling witness.

No person is rendered incompetent to be a witness by reason of interest, relationship, or conviction of any offence whatever. A solemn affirmation, as "in the presence of Almighty God," is generally substituted for an oath with Hindoo and Mahomedan witnesses; and Christians are sworn as in England. Act No. 19 of 1853. Act No. 5 of 1840.

Witnesses were always required to be examined *vivâ voce* in open court, and their depositions to be reduced into writing in the Persian, Bengal, or Hindoostanee language, as the witness might desire. But the Judges of zillahs were authorized to employ their registers and assistants, or any of their principal native officers, in taking down the depositions of witnesses whom they might not have time to examine *vivâ voce* themselves, and the practice became very general to have the witnesses examined by a native officer, while the Judge, though he might be present in the same room, was engaged with other business. This practice has now been abolished by the Act referred to, which requires that the evidence of the attending witnesses shall be taken in the presence and hearing and under the personal superintendence of the Judge. The examination usually commences with some question of course put by the Judge or officer, such as, What is your name and occupation, &c.? The witness is then questioned in chief by the vakeel of the party on whose behalf he is examined; and cross-examined by the opposite vakeel, followed by a re-examination by the first vakeel; and sometimes the whole is interspersed with questions by the Judge, for the purpose of more full elucidation. The whole questions and answers constitute the deposition of the witness, and being reduced to writing, he is required to put his name or mark to it. "When a witness is guilty of wilful and corrupt perjury in any cause or matter depending in court, the Judge is" required "immediately to commit the offender to close custody to take his trial" before the proper tribunal. But this is rarely done. Act No. 19 of 1853. 4 of 1793, sec. 14.

When all the exhibits have been filed, and the witnesses examined, a day is fixed for the final hearing of the cause, when the parties or their vakeels are required to be in attendance.

HEARING OF THE CAUSE.

No particular course is prescribed by the regulations to be followed at the final hearing; but it would seem from the common forms of the decrees, that the pleadings and depositions of the witnesses are either perused by the Judge himself, or read to him by his officer. The parties are then heard; and the general practice in this case is for the Judge to put a question to the vakeel of one of the parties, usually beginning with the plaintiff, which is answered by the opposite vakeel to the best of his ability, and then a good deal of wrangling sometimes follows between the opposite pleaders. Sometimes the Judge may ask the vakeel more generally if he has anything to say; when the vakeel may make any remarks which may occur to him, or refer generally to his pleadings and documents, and say that they contain all that is necessary. But the oral pleading most commonly takes the form of question and answer, and is known to the natives only by the corresponding words in the Persian language (*Soowal-o-juwab*). An attempt has been made within the

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Circular Order of S. D. A., dated 20th Nov. 1851.

last few years to introduce some greater degree of method in oral pleadings, by the application of rules originally framed by the Judges of the Sudder Dewanny Adawlut for regulating the oral pleading in that court. These will be more particularly referred to hereafter in noticing the practice of the Sudder Court. It is not known what degree of success has attended their extension to the Lower Courts.

Reg. 6 of 1832, sec. 3.

The Judge determines both fact and law. With regard to the *fact*, he may take the assistance of respectable natives as assessors in the three following ways:—1st, By referring the suit or any point in it to a *punchayet*,* who carry on their inquiries apart from the Court, and report to it the result. 2d, By constituting two or more such persons as assessors or members of the court; the opinion of each assessor to be given separately and discussed. 3dly, By employing them more as a jury. But under all these modes of procedure the decision is vested exclusively in the Judge.

Reg. 4 of 1793, sec. 15.

Reg. 3 of 1793, sec. 21.

With regard to the law, the Courts are to be guided in their decisions,—1st, By the regulations of Government, if there be any regulation applicable to the case; 2d, By Hindoo or Mahomedan law, as the case may be, in all "suits regarding succession, inheri-" tance, marriage, caste, and all religious usages and institutions; and, 3dly, In cases for "which no specific rule may exist the Judges are to act according to justice, equity, and "good conscience."

In practice, the Mahomedan law has been applied to a variety of cases, which may be arranged under the following heads, viz., Inheritance, sale, pre-emption, gift, wills, marriage, dower, divorce, parentage, guardians and minority, slavery, endowments, debts and securities, claims and judicial matters. And in cases where the parties are Hindoos family customs and the customs of particular parts of the country are in practice commonly recognized in modification of the general law.

In suits between Armenians relating to successions, the Courts are guided by the usages and customs of the parties, in so far as they can be ascertained by reference to the opinion of Armenian priests. And in matters of dealing between British subjects, the English Judges are in the practice of deciding as they best can according to English law, occasionally taking the opinion of the Advocate-General in doubtful cases.

As to Jews, East Indians, Native Christians, and Hindoo and Mahomedan converts to Christianity, practically there is no law or usage by which it can be said their rights are determined.

In cases to which Hindoo or Mahomedan law is applicable, it was required by the old regulations that the Hindoo or Mahomedan law officer should attend the Court and expound the law; and the Lower Courts were provided each with a Pundit and Mooftee for the purpose. But these offices have been abolished, and there is now only one Mahomedan and one Hindoo law officer attached to the Sudder Dewanny Adawlut; the former is called the *Qazee-ool-Qoozzat* †, and the latter the *Pundit*. When a case of doubt on the points above mentioned arises in the Lower Courts, it is now referred, through the Zillah Judge, to the Sudder Dewanny Adawlut, for reference to its officer.

Appendix to Report from Select Committee of the House of Commons on Indian Territories, 1852, p. 644.

Of all the suits decided by Moonsiffs in the Lower Provinces during the year 1850, there were ninety-one cases under the Mahomedan law of inheritance, 195 under the Hindoo law of inheritance, sixty-six cases of adoption, which it may be presumed were also under the Hindoo law, and 743 religious suits. If to these we add twenty-nine suits for dowry, and 158 by right of pre-emption, both of which it is probable fell under the Mahomedan law, there will have been in the whole 1,282 suits decided by the Moonsiffs, according to Mahomedan or Hindoo law.

During the same period there were decided by the same officers 203 cases of mortgage, seven lakhiraj‡ suits, 637 suits relating to putnee § and other dependent tenures, and 227 suits relating to sales by collectors for arrears of revenue; on all of which matters there are especial rules in the regulations. Adding all these together, it would appear that there were 1,074 suits which have been decided according to the regulations.

* From *punj* or *panch*, the Persian or Hindee word for five, the tribunal being always composed of five persons.

† Arabic, Judge of Judges. The Chief Justice of Baghdad was so styled. Qazee is pronounced qadee (cady) in Arabia.

‡ Arab. Compound of the negative *la* and *khiraj*, which means literally "going out," but is applied technically to the tax imposed by Mahomedans on the land of conquered countries, as an *out-going* from the produce. All land in India is assumed to be subject to *khiraj*, unless the right to it has been granted away by the Sovereign; and *la khiraj* suits are suits instituted to try the question whether lands held without payment of revenue are so held by a legal title or not. They are also called resumption suits, because by means of them the Government is said to *resume* the right illegally withheld from it.

§ The *putnee*, or *putnee taalook*, as it is commonly styled, (*taalook* being an Arabic word for dependency,) is an estate in perpetuity, held under the zemindar or landholder, subject to the payment of a fixed rent, and liable to be sold in default of payment. The *putnee dar*, or holder of the *putnee*, (*dar* being a Persian word for holder,) frequently sublets again to a person under him, who is called the *dur putnee dar* (from the Persian word *dur*, within); and there is no legal limit to such sub-holdings.

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After deducting the above from the whole number of cases decided by the Moonsiffs in 1850, it would appear that there were 82,725 suits left for decision according to justice, equity, and good conscience. But of this number 65,687 were for debt and the rent of land, which are matters usually of very easy determination, seldom involving more than questions of fact.

Without going into the same detail for the other native judges, it would appear that of the suits decided by the Sudder Ameens of the Lower Provisions in the year 1850, there were thirty-one decided according to Hindoo or Mahomedan law, and eighty-seven according to the regulations, leaving 1,352 for equity and good conscience. But of these 1,147 were for debt or rent. And of the primary suits decided by the Principal Sudder Ameens during the same year, there were 145 decided by Hindoo or Mahomedan law, 296 according to the regulations, and 2,105 by equity and good conscience; out of which 1,322 were for debt and rent.

The whole primary suits decided by the Zillah Judges during the same year were ninety-three; and of these there were only three which would probably have fallen under the regulations, and one that related to religion.

JUDGMENT.

When the judge has made up his mind as to fact and law, he is required to write his judgment on the spot with his own hand, and in his own language. If that is not the language of the Court it should be translated into such language. A copy or duplicate of this order or its translation, signed by the judge, forms what is called the final roobekaree, or proceeding, and closes the case. Reg. 12 of 1843.

As the pleadings, orders, and depositions accrue, they are strung together, and form what is called the nuthee, or file of the suit.

After the final disposal of the case, a formal decree is drawn up by the judges' officer, containing a list of all the papers in the cause, and of the names of the witnesses, an abstract of the pleadings and material proceedings, together with the final roobekaree, and a statement of the costs of both parties. These consist of the pleader's remuneration, estimated by the regular standard and the different stamps that may have been required during the progress of the suit. The decree is signed by the judge, and a copy, which in all courts but the Moonsiffs' is written upon stamped paper, is given to any of the parties on their applying for it, and depositing as many pieces of stamped paper as may be required according to the length of the decree. The value of each sheet of paper required for this purpose in the Sudder Ameens Court is one rupee, in the Judges and principal Sudder Ameens Courts, two rupees, and in the Sudder Dewanny Adawlut four rupees.

EXECUTION.

Every Court has power to execute its own decrees; and the petition for execution should be presented to the Court of primary jurisdiction, though the cause should have been appealed, and the ultimate judgment is that of the Court of Appeal. Act No. 25 of 1852, sec. 1.

A decree for money may be executed against the person or property, or both if necessary. There is sometimes much delay and difficulty in executing such decrees, chiefly from the facilities which the habits of the people afford to parties for concealing themselves from personal attachment, and the number of claims, some real, but mostly collusive, which are made to property when seized in execution. These claims when raised are inquired into summarily, and witnesses examined for and against the claimant. If the claim should appear to the judge to be valid, the property is released; if not, it is sold, subject to the claim; the claimant, or the decree holder, as the case may be, having a right to file a regular suit to dispute the summary order. From all such summary orders there is, however, an appeal to the superior tribunal; and in the Sudder Dewanny Adawlut, the disposal of them constitutes a material branch of what will be hereafter noticed as the miscellaneous business of that Court. Reg. 4 of 1793, sec. 7.

If the decree be for land or other property, it is executed by causing possession of the land or property to be delivered. There is not the same difficulty in executing a decree for the land itself, as in executing a decree for money when land is taken in execution, because the claimants usually come in at an earlier stage, that is, by petition while the suit is progressing, declaring their right to the land, and requiring to be made parties to the suit. Persons coming in this manner are called by a Persian term, which signifies a third party. There are sometimes several such additional parties in a suit, and evidence is received from them as from the original parties. The most common order with regard to them, when they are not in the possession of the disputed property, is to bring a suit if they think they have any right.

REVIEW OF JUDGMENT.

When a party is dissatisfied with the decision of a court of primary jurisdiction, he has in all cases an appeal to a higher tribunal, or he may first present a petition for review of judgment. The petition should state either the discovery of new matter, or evidence which could not be adduced before the decree, or some other good and sufficient reason for granting the review prayed for. If the petition be to the Zillah Judge, and he should think proper to reject it, his order to that effect is final. But if he be of opinion that the review Reg. 26 of 1814, sec. 4, cl. 2. Act 26 of 1852, sec. 3. Reg. 26 of 1814, sec. 4, cl. 2.

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Reg. 5 of 1831, sec. 19, cl. 2.
Con. of the Cal. and West Courts, 14th and 28th May 1841.

is necessary to correct some error or omission, or is otherwise requisite for the ends of justice, he is to report to the Sudder Dewanny Adawlut, which may, if it see fit, authorize the review. When the petition is for review of the judgment of a Principal Sudder Ameen, the same course is to be followed, and his order rejecting the petition is final in the same same way as that of the judge; but when the Principal Sudder Ameen shall be of opinion that his own judgment should be reviewed, the reference is to the judge instead of the Sudder Dewanny Adawlut, if the valuation of the suit be under 5,000 rupees. The order of the judge, though dissenting from the Principal Sudder Ameen, is held to be final in this case, and not open to revision on appeal to the Sudder Dewanny Adawlut. When the petition is for review of the judgment of a Moonsiff or Sudder Ameen, the order rejecting the review is also final, but the reference for permission to review is always to the Zillah Judge.

APPEAL.

When a party who is dissatisfied with the decision of a court of primary jurisdiction has determined to appeal to a higher tribunal, he may, in all cases, except where his appeal lies to the Sudder Dewanny Adawlut, present his petition of appeal, either in the court against whose decision he appeals, or in the court to which the case is appealable. Where the appeal is to the Sudder Dewanny Adawlut it must always be presented to the Court in which the decision was passed.

Act 15 of 1853. sec. 2.
Reg. 23 of 1814, sec. 46, cl. 1, and Act 26 of 1837, sec. 9.
Act 4 of 1850, sec. 1.

Thirty days are allowed for appeals from the uncovenanted judges to the Zillah Judge, and six weeks for the appeal to the Sudder Dewanny Adawlut; the time in the former case to be reckoned from the date on which copies of the decrees may have been furnished or tendered to the parties or their vakeels, and in the latter, from the date of decision.

The petition of appeal must in all cases be on a stamp of the full amount according to the valuation of the suit, and is very brief, stating merely that the party is dissatisfied with the judgment, and is desirous of appealing from it.

SUSPENSION OF EXECUTION.

Reg. 23 of 1814. sec. 46 and 73.
Con. No. 284, 29th Dec. 1814, par. 3.
Reg. 13 of 1808, sec. 11, cl. 2.
cl. 3.
Ibid. sec. 12 and Reg. 13 of 1796, sec. 2.

When an appeal may be received by a Zillah Judge from the decree of a Moonsiff, Sudder Ameen, or Principal Sudder Ameen, he is empowered to suspend the execution of the decree, provided the party appealing against it shall give good and sufficient security to perform the decree of the Court: and where the judgment is for money or other moveable property, the execution must be stayed subject to that condition.

Where the appeal is to the Sudder Dewanny Adawlut, and the decree is for the proprietary right in land, houses, or other immovable property, the person obtaining the decree is to be put in possession, notwithstanding an appeal, provided he shall give good and sufficient security for performing the decree which may be ultimately passed. The superior Court may, however, for special cause, allow the appellant to retain possession on his giving the like security. Where the decree is for money or other moveable property, the decree cannot be carried into execution during the appeal, provided the appellant give good and sufficient security.

Reg. 5 of 1831, sec. 16, cl. 3.
Act No. 8 of 1850.

The practice in regular appeals is nearly the same in all the Courts. In appeals to the Zillah Judge from decisions of the Moonsiff, Sudder Ameen, or Principal Sudder Ameen, it is not necessary to summon the respondent in the first instance; but if, after perusal of the record and the petition of appeal, the judge shall see no reason to alter the decision of the Court below, he may confirm it, and communicate his order of confirmation through that Court, to enable the respondent to take execution of the decree. Similar power is given to Principal Sudder Ameens in appeals referred to them. A single judge of the Sudder Dewanny Adawlut possesses the like power, but it is now rarely exercised, and the usual course is to summon the respondent. In what follows regarding the practice in regular appeals, reference is made more particularly to that Court.

PRACTICE OF THE SUDDER DEWANNY ADAWLUT IN APPEALS.

Act 15 of 1853, sec. 5.
sec. 6.

The petition having been filed in the lower Court, is certified to the Sudder Dewanny Adawlut as soon as conveniently may be done, and notice thereof in writing given to the appellant. Within six weeks after receipt of such notice, he must present, either in person or by vakeel, to the Sudder Dewanny Adawlut, the specific objections and detailed reasons for appeal; otherwise the appeal will be dismissed, unless reasonable cause be shown for the default.

These objections or reasons of appeal are called in the native languages *moojibat* or *wujoohat*,* and must be on stamp paper of the value of four rupees. They usually commence with a reference to the petition of appeal; then follows an abstract of the case and of the judge's decree. The reasons assigned by him for his judgment are then analyzed, and answered numerically, to the best of the writer's ability. A reasonable time is allowed to the respondent to answer; and in the answer the reasons of appeal are taken numerically, and an answer given to each, according to the writer's ability. The reasons and answers are both argumentative, and by no means confined to a statement of the facts.

* Both these words are Arabic, and signify "reasons."

No further pleadings are allowed; and when the respondent neglects to put in his answer at the appointed time, the cause may be set down for hearing without it. In practice, however, the answer is received if tendered at any time up to the hearing, and even at the hearing.

It is the duty of one of the judges of the Court to determine when a cause is ripe for hearing, and to order it to be set down for that purpose. Causes so ordered are distributed by the Register of the Court to the different judges, according as they may have more or fewer cases already on their files unheard. The list of causes ready for hearing is fixed up in some conspicuous part of the Court, and the vakeels are required to take notice and to be in attendance when their causes are called on.

The practice at the hearing of the cause in the Sudder Dewanny Adawlut at Calcutta, up to the latest accounts, except as herein-after mentioned, was as follows:—

Each judge has two ministerial officers; one of them is called his *peshcar*,* and writes and issues his orders; the other his *mislkhwan*, or reader.† The vakeels of both parties are in attendance, and the roll containing the file of the cause is opened by the reader, who commences reading the papers, beginning with the plaint and going through the whole proceedings of the lower Court, omitting only the immaterial parts. After the judge has ascertained the names of the parties and the matter in dispute, he seldom requires the vakeels to remain in attendance, and those who have much business may have cases before several judges at the same time. Sometimes a point may occur on which the judge requires explanation, and then the vakeels are called; a question is put and answered, and then sometimes follows a discussion in the manner already explained; but this is usually left till the judge has got through the whole of the proceedings. While the papers are reading, the judge usually takes very full notes in English of all that he thinks material to the case. If, after a perusal of the papers and such questions as he thinks proper to put to the vakeels, the judge agrees with the decree of the lower Court, he has the power of confirming it at once. If he differs in opinion from the judge of the lower Court, he mentions the fact to the vakeels, and dictates a short order to his *peshcar*, directing that the case may be laid before a full sitting of the Court; and afterwards arranges with two of his colleagues that they shall sit together with him, and finally dispose of the case. Another day is then fixed, when the three judges meet, and the same course is followed, the other two judges making their notes as the single judge did before. After the whole proceedings were gone through, and the vakeels heard, there was then a consultation between the judges, and the decision of the majority was written out by one of the judges (of the two who agreed when the opinion was not unanimous) in English, and then intimated verbally in the language of the court to the parties or their vakeels. The written order was afterwards translated into the form of a roobekaree, and signed by the two judges; the opinion of the judge who differed being also written out by him, and afterwards translated in the same manner.

The decree of the Sudder Dewanny Adawlut is drawn out substantially in the same manner as in the lower Courts.

Some modification of this practice has been lately introduced at Calcutta under Rules of the Court, which has been thus described by Mr. J. F. Halliday, late Secretary to the Government of India, in his evidence before the Judicial Committee of Her Majesty's Privy Council. 1st. "The judges seldom sit singly,—only in particular instances which do not bear upon "the matter in hand; they do not sit singly at all for the decision of cases, they sit on a "bench of three, and decide by the majority if they differ." "Instead of the judges having "to read and translate, each separately for himself, all the voluminous papers in the native "languages, as was formerly the custom, the important papers—for instance the pleadings "and the decision of the Court below, containing the reasons in full for the decision against "which the appeal is made,—are translated by official persons employed for that purpose, "and transcripts of the translations in manuscript are placed in the hands of each judge "who is to sit on the bench at the time of the trial." The witness then adverts to new rules which the Court has introduced into its own practice, and recommended for adoption to their subordinate Courts. "The following are the rules set forth in the instructions:— "At the hearing of a regular case, the pleader of the appellant shall, in the first instance, "state in brief and distinct terms the issues, whether of fact or law, which he would propose "for argument. The pleader for the respondent shall then state which of these issues he "accepts as issues in the case, should it be heard on the merits, and which of them he objects "to, and the reasons for such objection. He shall next state any farther issues, whether in "bar of the appeal or on the merits, which he would propose for argument on behalf of the "respondent. It is expected that the pleaders will mutually communicate and compare "their proposed issues before a case comes on for hearing, so that the issues accepted by "them may be at once declared, and their discussion with a view to the approval of issues by "the Court being confined to those issues which they contest. The Court, after requiring "from the pleaders any explanations or statements that they may be deemed necessary, "and considering the issues proposed by them, shall determine and record the proper issues "for trial on the appeal. That is done vivâ voce in open Court. The pleaders of the

See Circular Order of S. D. A., dated 20th Nov. 1851.

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* Persian. Compound of *pesh*, before, and *kar*, business.

† Compound of *misl* (Arabic), technically applied to the file of the cause, and *khwan* (Persian), reader.

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"appellant and the respondent shall be required, in arguing on the merits of the case, to "confine themselves to the issues so laid down by the Court. If any fresh issue of law "be suggested in the course of argument, either on the part of the pleaders or that of the "Court, the Court shall be empowered to add such issues to the written issues as first "drawn, and the pleaders shall be at liberty to argue and reply thereupon. There is a "subsequent resolution of the Sudder Court bearing on the foregoing, the first part of which "I need not read, but the second part of it is material to the matter in hand. 'The Court "consider it very desirable that the issues, whether for the appellant or respondent, signed "by the pleaders proposing them, and with the words 'accepted' or 'objected to' noted "opposite to each issue by the pleader of the other party, should be written in any of the "native languages current in the Court or in English, and delivered to the native deputy "registrar, eight days previous to Monday of the week appointed for the hearing, so "that if, in any of the native languages, translations may be made, and copies of the issues "may be attached in English to the three copies of the pleadings and decision, now made "for the judges of the full bench. A pleader appointed in the cause after the filing of the "issues as above directed will be at liberty to propose fresh issues at the hearing, having "previously shown them according to the present practice, to the opposing pleader. But "it is expected that, as far as may be in their power, pleaders, even if appointed after the "filing of the first issues, will arrange for settling any issues proposed by them, so as "to admit of these being translated and filed with the translations of pleadings (with a note "of 'accepted' or 'objected to' by the pleader of the other party as under the preceding "rules,) for some days before the hearing.' Thus the Court has before it the translation of "the pleadings, the translation of the decision of the Court below, and the translations of "the issues proposed, accepted, and objected to by the several pleaders; and upon that, in "a great number of instances, without any reference to the native papers at all, they decide "the cases, as I have seen myself, sitting in the Sudder Court."

Evidence of Mr. Lushington before Judicial Committee of the Privy Council, p. 3.

The new rules have not yet been adopted at Agra, and it is believed that the practice there, and at the other presidencies, is substantially the same as first described. But a report of the Sudder Dewanny Adawlut at Calcutta, on the working of the new rules, has been lately received at the India House, from which it appears that a majority of the judges are of opinion that the new rules have been acted upon without difficulty.

Act 25 of 1852.

The decrees of the Sudder Dewanny Adawlut are executed in the same way as the decrees of inferior Courts, through the Court of primary jurisdiction which made the first decree appealed from.

General Business of the Sudder Dewanny Adawlut.

The general business of the Sudder Dewanny Adawlut may be classed under six different heads.

1st. The English department, through which the Court exercises a general superintendence over its subordinate Courts, issuing, as may be required, circular orders for their guidance, and formerly constructions of the regulations. The circular orders of the Sudder Dewanny Adawlut at Calcutta, which now issues its circulars in concurrence with the Court at Agra, amount to four thin quarto volumes. Both Courts have for some time given up the practice of issuing constructions; but those already in existence, and which are received as authority in all the inferior Courts, and by the superior Court itself, now amount to three thin quarto volumes. The Court also has considerable correspondence, through its Register, with the different departments of Government and Government itself.

Appendix to the Report of Select Committee of the House of Commons, (1852) p. 640, No. 2.

2d. The hearing and disposal of regular and special appeals from the decisions of all the Courts below. Of these 406 were disposed of by the Sudder Dewanny Adawlut of Calcutta, in the year 1850; 87 by confirmation of the lower Court's decrees, 74 by reversal or modification, 214 by remand for re-trial, and the remaining 31 by dismissal for default or adjustment.

Ib., p. 647, No. 11.

3d. The hearing and disposal of petitions for special appeal; of which 279 were admitted, 383 rejected, and seventy-seven otherwise disposed of by the same Court in the same year.

Ibid.

4th. The hearing and disposal of summary appeals under Reg. 26 of 1814; or cases in which the lower Court may have refused to admit an original suit or appeal; or, having admitted, may have dismissed it on the ground of some informality, without investigation of the merits. Of applications of this description, forty-seven were disposed of by a confirmation of the orders appealed from, sixty-two by a reversal, and eight were struck off or otherwise disposed of.

Ibid.

5th. The hearing and disposal of summary appeals under Regulation 7 of 1825; or appeals from the orders of judges regarding the sale of houses and lands in execution of decrees. Of summary appeals of this description 157 were disposed of in the same year by confirmation, ninety-four by reversal, and forty were struck off or otherwise disposed of.

Ibid.

6th. The hearing and disposal of all other miscellaneous petitions; of which 152 were disposed of by confirmation of the orders appealed from, 102 by reversal, and 160 by being struck off or otherwise disposed of.

The three last classes of business are usually disposed of by one judge, who takes what is called the miscellaneous department, or the department of petitions. The practice is very simple. The petition is filed on a stamp of two rupees, with a copy of the order appealed against. All the petitions filed during the week form the judge's file for the following week, and are taken in order. The vakeel who presents the petition is in

attendance, and sometimes a vakeel for the opposite party, who, though not summoned, is allowed to be heard. If the judge sees enough on the face of the order to enable him to come to a judgment, he disposes of the application at once by confirming or reversing the order. If not, he calls for the proceedings from the lower Court, together with the depositions of the witnesses. The case is then postponed, and stands over till the papers arrive from the lower Court; when it is again brought on in what is called the paper of returns, and then usually disposed of. APPENDIX B. No. 3.

APPEAL TO THE PRIVY COUNCIL.

From all decisions of the Sudder Dewanny Adawlut in regular appeals, where the value of the property in dispute is 10,000 rupees or upwards, an appeal lies to Her Majesty's Privy Council. Order in Council dated 10th April 1838.

This petition must be presented to the Sudder Court within six months from the decree, and ought to be accompanied with security for the respondent's costs, which is now fixed at 5,000 rupees. The security may be either money or Government securities, commonly called Company's paper, or what is called a *Mal* Zaminy*† bond, that is, a bond entered into by one or more sureties mortgaging landed property of adequate value. When security of the latter description is given, the bond is sent down to the lower Courts to be inquired into. This is usually done through the judge's nazir, who directs one of his inferior officers to make inquiries on the spot, and affix to some conspicuous place on the land an *ishtihar*‡ or notice, calling upon all parties who may claim any interest in it to come forward and state their claims to the Court.

When the security is returned approved, the appellant is called on for the costs of translation, which having paid into court, the appeal is allowed, and all the material papers in the case are translated into the English language by translators appointed by the Court, and two authenticated copies of the translation are sent to the Government of India for transmission to the Court of Directors.

"In cases of appeal to His Majesty in Council, the Court of Sudder Dewanny Adawlut " may either order the judgment passed by them to be carried into execution, taking " sufficient security from the party in whose favour the same may be passed for the due " performance of such order or decree as His Majesty, His heirs or successors, shall think " fit to make on the appeal; or to suspend the execution of their judgment during the " appeal, taking the like security in the latter case from the party left in possession of the " property adjudged against him." Reg. 16 of 1797. Sec. 4.

The security is of the same description as above mentioned, and, when land, is inquired into in the same way.

APPENDIX B.—No. 4.

APPENDIX B. No. 4.

OUTLINE of the CONSTITUTION and PROCEDURE of the EAST INDIA COMPANY'S COURTS of CRIMINAL JUDICATURE in the PRESIDENCY of BENGAL.

JUDGES AND JURISDICTIONS.

I. THE NIZAMUT § ADAWLUT.

THIS Court is composed of the same Judges as the Sudder Dewanny Adawlut; and it is styled, in respect of its double functions, the Sudder Dewanny and Nizamut Adawlut.

It exercises a general control over the whole criminal administration of the country. It has no original jurisdiction, and its appellate jurisdiction is limited to appeals from sentences and orders passed by the Session Judges in judicial trials.

II. THE SESSION JUDGE.

The Session Judge is the head criminal authority in the zillah, and is the same person as the Civil Judge. In respect of his double functions, he is termed the Civil and Session Judge.

His jurisdiction is partly original and partly appellate. His original jurisdiction is restricted to persons committed by the Magistrate to take their trial at the Sessions. His appellate jurisdiction extends to all sentences and orders passed in judicial trials by the Magistrate or his subordinates, with some partial exceptions, as herein-after more particularly mentioned. Reg. VII. of 1831, s. 4.

The Magistrate is bound by law to commit for trial at the Sessions all persons (except as herein-after mentioned) charged with treason, murder, robbery, wilful fire raising, and counterfeiting the coin. He is also bound to commit for burglary, theft, the receiving or Reg. IX. of 1793, s. 5. Reg. IX. of 1807, s. 3.

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* Arab., property.
† Arab. (*zamin*), surety.
‡ Arab., publication.
§ This is an Arabic word, which means, "arrangement or reducing to order," and Governors of Provinces under the Mahomedan Government were sometimes designated by names derived from the same root, as the *Nazim* and the *Nizam*.

APPENDIX B. — No. 4. Reg. XII. of 1818, s. 2.

buying of stolen goods and property, and affrays under the aggravating circumstances which will be detailed hereafter, as constituting the exceptions which take these offences out of his own competence to punish. Forgery and perjury also belong to the exclusive jurisdiction of the Session Judge.

With regard to all other crimes and misdemeanors, the Magistrate has a discretion, and will commit them for trial by the Session Judge only when accompanied with such circumstances as render the punishment which he can inflict inadequate to the offence.

The appellate jurisdiction of the Session Judge extends to all convictions and original sentences by a Magistrate, or other officer exercising full magisterial powers in his zillah, and pronounced in a judicial trial; with the exception of the petty offences noticed on page 6, with respect to which, when punished by the Magistrate himself, instead of being referred to his subordinates, the order of the Magistrate is final.

III. The Magistrate and his Subordinates.

Mr. Halliday's Evidence, 1 Commons Reports, 1853, p. 110.

The police of a zillah is generally placed under the immediate authority of a single Magistrate, who is a member of the Covenanted Civil Service, and usually from five to ten years' standing.

Sometimes a Joint Magistrate is appointed to a zillah, when it is very large. In such cases the Joint Magistrate is appointed to some particular district of the zillah, when his powers are confined to that district, to the exclusion of the Magistrate.

The Joint Magistrate is also a member of the Covenanted Civil Service, but is usually of less standing than the Magistrate. His jurisdiction and powers of punishment are the same.

To the Magistrate several of the younger members of the Covenanted Civil Service are usually attached, for the purpose of aiding him generally in the performance of his duties, and also of being themselves instructed in those duties. They are called Assistants to the Magistrates.

There is, further, usually in each zillah one uncovenanted assistant, who is called the Deputy Magistrate. He may be selected from any class of persons, European or native; no one being held to be disqualified for the office by his birth, descent, or religion.

Judicial Powers of the Magistrate.

Reg. XII. of 1818, s. 2, cl. 2. Reg. VI. of 1824, s. 3. Reg. XII. of 1818, s. 3, cl. 2. Reg. IV. of 1820, s. 4. Reg. XII. of 1818, s. 4, cl. 2. Reg. VI. of 1824, s. 4. Reg. VIII. of 1828, s. 3.

The Magistrate has criminal jurisdiction over burglary, theft, the receiving or buying stolen goods and property, and affrays, under certain exceptions; and also over convicts or prisoners who may effect their escape from a gaol or other place of confinement, or from the custody of their guards. The exceptions in the case of burglary are, where the offence has been accompanied with murder, or with an attempt to commit murder, or with wounding, burning, corporal injury, or other aggravating act of personal violence; or where the person charged has before been convicted of burglary, robbery, or other heinous crime, or is of notoriously bad character, or is charged with committing the offence while employed in the office of a watchman, guard, or police officer, or if the value of the property stolen exceeds the sum of one hundred rupees; or whenever the Magistrate may be of opinion that there exist any circumstances of aggravation (though not of the nature above specified), such as to render the prisoner deserving of a more severe punishment than the Magistrates are competent to inflict. The exceptions in the case of theft are, where the offence has been accompanied with any of the aggravating circumstances above specified; or where the amount or value stolen exceeds the sum of three hundred rupees. The exceptions in the case of receiving or buying of stolen goods are, where the person is charged with knowing, at the time of his purchasing or receiving the same, that such property had been obtained in the perpetration of robbery by open violence, or of theft, accompanied by any of the aggravating circumstances above mentioned; or where the amount or value of the property stolen exceeds three hundred rupees. The exceptions in the case of affrays are where they are attended with homicide, severe wounding, or other aggravating circumstances.

Reg. XII. of 1818, s. 2.; and II. of 1834, s. 2. Reg. VIII. of 1828, s. 3. Reg. II. of 1834, s. 3.

In the excepted cases it is the duty of the Magistrate to commit the person charged with any of the offences above mentioned for trial at the Sessions. But where the exceptions do not occur, the Magistrate is authorized to try them himself, and to punish them, if convicted, with any amount of punishment which he may deem adequate to the offence, not exceeding imprisonment for two years with hard labour, together with a further term of imprisonment for one year in lieu of corporal punishment, which has been abolished. In the case of affrays, his power of punishment is limited to one year's imprisonment, with or without hard labour and irons, and a fine of 200 rupees, commutable to imprisonment for another term not exceeding one year. He is also required to commute the labour to a fine not exceeding the same amount, but otherwise to be regulated with reference to the nature of the offence and the circumstances in life of the offender.

In cases of theft cognizable by the Magistrate, if the value of the stolen property exceed fifty rupees, or if the person committing it shall have been before convicted of theft, burglary, robbery, or other heinous offence, or if the prisoner have committed the offence while employed as a watchman, guard, or police officer, or be a servant of the person from whom, or in the house from which the property may have been stolen, and also in all cases of cattle stealing, the Magistrate ought to try the prisoners himself.

Cases which the Magistrate may refer to his Subordinate.

APPENDIX B. No. 4.

All cases of theft, other than those above specified, the Magistrate is authorized to refer for decision to his assistant, or investigate them himself, as he may think proper.

The Magistrate is also competent to refer for trial to the Mahomedan Law Officer attached to the Court of the Sessions Judge, or to the Principal Sudder Ameen, or to the Sudder Ameen, or Deputy Magistrate, all complaints or charges brought before him for petty offences, such as abusive language, calumny, inconsiderable assaults, or affrays, and all charges of petty thefts, when unattended with aggravating circumstances. Reg. XII. of 1818, s. 3, cl. 5. Reg. III. of 1821, ss. 3 and 4. Reg. V. of 1831, s. 18, cl. 6.

Whenever a complaint of a criminal nature is referred, as above mentioned, by a Magistrate, the order of reference should be recorded on his proceeding, with instructions, whether to submit the proceedings held upon the examination for the Magistrate's decision, or whether the decision on the charge is to be passed by the Assistant, or person to whom the reference is to be made, if it be such as he is authorized to determine under the Regulations. Reg. XI. of 1807, s. 21.

Judicial Powers of the Assistant to the Magistrate.

The Assistant to the Magistrate has criminal jurisdiction in all cases that may be referred to him for trial by the Magistrate, and is authorized to exercise the judicial powers vested in the Magistrate by the Regulations, so far as may be necessary to enable him to perform the duties committed to him. Reg. XIII. of 1797, s. 3.

His power of punishment is limited to imprisonment for one month, with an additional period of one month's imprisonment in lieu of corporal punishment. Reg. IX. of 1807. Reg. II. of 1834, s. 2, cl. 2.

Whenever the Assistant to a Magistrate is reported by the Nizamut Adawlut to be qualified by his experience, industry, and abilities to be entrusted with special powers, he may be specially authorized by the Governor-General in Council, in all cases referred to him in which an individual may be convicted of any criminal offence punishable under the Mahomedan Law and the Regulations, for which the penalties above quoted may be insufficient, to pass sentence of imprisonment not exceeding six months, together with an additional period of one month in lieu of corporal punishment. Reg. III. of 1821, s. 2. Ibid. cl. 3.

Judicial Powers of the Deputy Magistrate, Mahomedan Law Officer, Principal Sudder Ameen, and Sudder Ameen.

These Officers have the like jurisdiction and powers as the Assistant Magistrate in cases that may be referred to them by the Magistrate. The Deputy Magistrate may also be specially empowered in the same way as the Assistant Magistrate; and when so specially empowered, his jurisdiction and powers of punishment are the same. He may be further invested with full magisterial powers by an order of the Governor-General in Council; and when so empowered he has the full judicial powers of Magistrate, and may punish to the same extent, viz., two years' imprisonment with hard labour, and an additional term of imprisonment for one year in lieu of corporal punishment. The office of Deputy Magistrate may be held by any uncovenanted officer in the Revenue and Judicial Departments; and Principal Sudder Ameens are frequently appointed to act as Deputy Magistrates by an order of the Government. Act XV. of 1843, s. 3.

Exception to Jurisdiction.

British-born subjects of Her Majesty are exempted from the criminal jurisdiction of all the East India Company's Judges, and are amenable in respect of crimes only to Her Majesty's Supreme Court of Judicature at Fort William; except as hereinafter particularly mentioned. They are liable to the criminal jurisdiction of the Zillah Magistrate, in case of any assault, forcible entry, or other injury accompanied by force not being felony committed against the person or property of any person whatever; and in such cases the Magistrate has power to punish on conviction, by fine not exceeding 500 rupees, or two months' imprisonment if the fine is not paid. They are further liable, when appointed to the offices of Principal Sudder Ameen, Sudder Ameen, and Moonsiff, for acts done in such capacities, to the criminal jurisdiction of all the East India Company's Judges. Stat. 53 Geo. III. c. 155, s. 105, extended by Act VII. of 1853, s. 1. Act VIII. of 1836, s. 2.

There are some special enactments which impose fines, and, in some instances, imprisonment, for particular offences, and all persons are made amenable in regard to such offences to the justices of the peace and other magistrates. Act XVII. of 1837, which relates to the Post Office, Act XXXI. of 1838, in regard to growing trees or plants, and Act V. of 1844, "for the suppression of lotteries," are of this description; and in these there is no exception of British subjects. In other Acts British subjects are made liable in more express terms to the jurisdiction of the East India Company's criminal courts. Thus by Act V. of 1848, s. 2., it is enacted, that in Bengal it shall be lawful for the zillah and city magistrates and joint magistrates to take Moochulkas or penal recognizances as well from British subjects as from other persons; and by Act XIX. of 1850, s. 23., "concerning the binding of apprentices," it is declared that all British subjects, wherever or of whatever parents born, shall be amenable for the purposes of the Act to the jurisdiction of the courts and magistrates of the East India Company.

PROCEDURE.

Criminal cases originate either in a complaint by an aggrieved party made to the Magistrate direct, or through the inferior Agents of Police, or information conveyed to him by the latter.

APPENDIX B. No. 4.

The zillahs are divided for police purposes into smaller sub-districts, called Police Jurisdictions. These are about ten coss square, or comprehend an area of about 400 square miles; the coss being about two miles in length. The guarding of a Police Jurisdiction is committed to a Superintendent, with an establishment of officers, stationed at some centrical place within a jurisdiction called the Tannah. The Superintendent's official designation is the Darogha, but he is sometimes called simply the Tannahdar, which means holder of the Tannah. The establishment consists of a Moohurrir, or writer, several Jemadars, or police serjeants, and a sufficient number of Burkundazes, or constables.

It is the duty of the Darogha and his subordinates to keep the peace within his jurisdiction and to apprehend offenders. He is also authorized to receive complaints against persons charged with any offence, except the following, which he is expressly prohibited from receiving, viz.: any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assaults. Complaints of this nature are reserved for the Magistrate, to whom parties preferring them to the Darogha must be referred. (Reg. XX. of 1817, s. 12.)

In cases within the Darogha's cognizance, he is directed to make all necessary preliminary inquiries, and to forward the complainant with his witnesses and the person charged to the Magistrate, unless the offence be bailable, when he is to take security for his appearance before the Magistrate at a fixed day.

When the charge is laid before the Magistrate, he either refers it to one of his subordinates or reserves it for investigation himself. In the latter case he examines the prosecutor and his witnesses, on oath or solemn affirmation, and also interrogates the prisoner as to what he has to say to the charge. He then either discharges him, or, if he have reason to think him guilty, commits him to take his trial, according to the nature of his offence, before the Session Judge, or proceeds to dispose of the case himself.

TRIAL BEFORE THE MAGISTRATE.

If the Magistrate should determine to try the case himself, and the witnesses of the prisoner are in attendances, the Magistrate will, in general, immediately proceed with the trial; if not, he will postpone it for a reasonable time, and issue summonses to the witnesses whom the prisoner may wish to call on his behalf.

At the trial the prisoner is asked if he is guilty or not guilty. His answer is taken; but though he should plead guilty the trial proceeds. If he deny the charge, what he has to say in his defence is heard, and his witnesses are then examined; after which the Magistrate pronounces his verdict of acquittal or conviction, and in the latter case passes sentence for an adequate punishment, within his competence to inflict. (Reg. IX. of 1793, s. 47.)

In cases referred by the Magistrate for trial to any of his subordinates, the procedure is the same as in trials before the Magistrate himself.

TRIAL BEFORE THE SESSION JUDGE.

For the trial of persons committed to the Session Judge, that officer is directed to hold a gaol delivery at least once a month. (Reg. VII. of 1831, s. 4.)

Before the trial the Magistrate binds over the prosecutor, when there is a private prosecutor, and his witnesses to attend before the Session Judge. He also ascertains from the prisoner the names and places of abode of any witnesses he may wish to have summoned on his behalf, and he issues the proper summonses for causing them to attend.

At the Sessions the Judge is furnished with a calendar of the prisoners to be tried, accompanied with the Magistrate's proceedings upon each charge, which are to contain, among other things, the original complaint or charge, the complainant's oath or affirmation to its truth, and the depositions of the witnesses who may have been examined before the Magistrate.

At the trial the Session Judge is assisted by a Mahomedan Law Officer, who is called the Molvee Adawlut.

He may also call to his assistance respectable natives in any of the following ways: 1st, he may refer the whole case, or any point in it, to a *punchayet,* who carry on their inquiries apart from the Court, and report to it the result; 2nd, he may constitute two or more persons assessors or members of the Court, the opinion of each assessor to be given separately and discussed; 3rd, he may employ the persons as a jury. (Reg. VI. of 1832, s. 3.) When the person to be tried is not a Mahomedan he may claim to be exempted from trial under the provisions of the Mahomedan Criminal Code; and in such cases the Judge is to proceed in one of the ways above referred to. (Reg. VI. of 1832, s. 5.)

When the trial is before the Judge, assisted by the Molvee Adawlut, the proceedings are as follows:—

The prosecutor is allowed to prosecute in person or by vakeel. except in cases where the Mahomedan law requires the appearance of the prosecutor himself. (Reg. IX. of 1793, s. 48.)

When there is no private prosecutor, the prosecution is conducted by the Government Pleader attached to the Judge's Court.

In all Courts and before all Magistrates or persons exercising any of the powers of a Magistrate, every person on trial for the commission of any offence is admitted to defend himself either personally or by his authorized agent. (Act XXXVIII. of 1850, s. 1.)

The said Courts, Magistrates, and persons, subject to such rules as may be made for their guidance by the Nizamut Adawlut, may allow any prosecution to be conducted by an authorized agent. (Ibid. s. 2.)

APPENDIX B. No. 4.

The trial commences with the charge against the prisoner. He is then asked if he is guilty or not guilty; and the trial proceeds as before a Magistrate. The witnesses are all examined by the Session Judge himself, though it is feared that this is neglected in trials before the Magistrates and their subordinates, these officers sometimes contenting themselves with merely hearing the depositions of the witnesses, which have been reduced to writing by an Officer of the Court, read in open Court.* The depositions of the witnesses examined by the Session Judge are also reduced to writing, and the Law Officer is required to write at the end of the record of the proceedings the *futwah* or decision of the Mahomedan Law, as applicable to the circumstances of the case, comprehending both the fact and the law; that is, whether the evidence be or be not sufficient, according to that law, to establish the guilt of the prisoner, and what degree of punishment the law assigns for the offence with which he is charged, supposing it to be proved. (Reg. IX. of 1793, s. 47.)

After the Judge has read the *futwah*, if it appears to him consonant to natural justice, and also conformable to Mahomedan Law, he is to pass sentence in terms of the *futwah*, except in cases where the sentence is for death or imprisonment for life. In such cases he is to transmit copies of the sentence and proceedings to the Nizamut Adawlut, and to await its final sentence. He is to follow the same course when he disapproves of the *futwah* delivered by the Law Officer. (Ibid. — Ibid. s. 54.)

When the trial is before the Judge, assisted by respectable natives in any of the ways before mentioned, he may dispense with the *futwah* of the Mahomedan Law Officer, which is declared to be unnecessary. Provided, however, that when the *futwah* is dispensed with, and the crime is one which the Judge is not specially empowered by the Regulations to punish, he must refer the matter to the Nizamut Adawlut, stating the opinion of the *punchayet*, assessors or jury, and the nature and extent of the punishment which should be awarded. In all cases tried by the Judge with the assistance of natives, the decision is vested exclusively in the Judge. (Reg. VI. of 1832, s. 4, cl. 1. — Ibid. cl. 2.)

THE LAW.

The criminal law is that which prevailed in India under the Mahomedan rulers of the country, modified by the Regulations of the Government of Bengal, and Acts of the Council of India. The Mahomedan criminal law may be generally described as written or unwritten, the former being contained in many recognized treaties on Mahomedan law, and the latter being gathered from the practice of the country as expounded by the law officers in cases for which there is no positive written law. Any further detail on this subject is unnecessary, as it has been proposed to abolish the whole criminal law as at present administered, and to substitute for it a complete penal code.

APPEALS.

From every sentence or order in criminal trials for petty offences,—such as abusive language, calumny, inconsiderable assaults or affrays, where the punishment is not more than imprisonment for fifteen days, or a fine not exceeding 50 or 200 rupees, according to the condition of the offender,—or in criminal trials for petty thefts where the punishment is not more than imprisonment for one month,—or in judicial proceedings, other than criminal trials, passed by any officer under a Magistrate empowered to try criminal cases,—there is an appeal to the Magistrate. (Art. XXXI. of 1841, s. 2.)

From every sentence or order in criminal trials for the above offences where the punishments are greater than what are above specified, and in judicial proceedings, other than criminal trials, passed by a Magistrate, Joint Magistrate, Assistant to a Magistrate vested with special powers, or other officer empowered to try criminal cases, there is an appeal to the Sessions Judge. (Ibid.)

From every sentence or order passed in a criminal trial by a Sessions Judge there is an appeal to the Nizamut Adawlut. (Ibid.)

PROCEDURE IN APPEALS.

The appeal is by petition, which in the case of appeals to the Magistrate or the Session Judge must be presented within one month. Where the appeal is to the Nizamut Adawlut three months are to be allowed for presenting the petition. (Ibid.)

On the petition being presented, the Magistrate or Judge, or Court of Nizamut Adawlut, as the case may be, must call for and revise the whole record of the case. But no Court of Appeal has the power to enhance punishment, or to punish any person acquitted by the Court below. (Ibid. s. 4.)

REVISION OF PROCEEDINGS OF LOWER BY SUPERIOR CRIMINAL COURTS.

Monthly statements of crimes committed and persons punished, &c., with an abstract of sentences annexed, are forwarded by the Magistrates to the Session Judges; and similar abstracts are forwarded by the Session Judges to the Nizamut Adawlut, containing an abstract of the evidence given at the trial.

* This practice has been corrected by Act XIX. of 1853, so far as relates to the Civil Courts, but the Act is confined to these Courts.

Appendix B. No. 4

Art. XXXI. of 1841, s. 3.

Ibid. s. 5.

With the aid of these statements, the whole administration of criminal justice is brought under the review of the higher authorities. The Nizamut Adawlut may call for the records of any criminal trials of any subordinate Court, and pass upon them such orders as may seem fit, subject to the exception above mentioned. And the Session Judge, Magistrate, Joint Magistrate, or officer exercising the powers of Magistrate, may in like manner call for and examine the records of the Courts immediately subordinate to their respective Courts, for the purpose of satisfying themselves of the regularity of the proceedings of such subordinate Courts. But no Court, except the Nizamut Adawlut, can alter the sentence of a subordinate Court, except upon appeal duly made.

Appendix B. No. 5.

APPENDIX B.—No. 5.

Outline of the **Constitution** and **Procedure** of the East India Company's **Courts** of **Civil Judicature** in the Presidency of **Madras**.*

The Judges.

There are two orders, Covenanted and uncovenanted, as in Bengal.

The Covenanted Judges are judges of,

Reg. V. of 1802, s. 3. Reg. III. of 1807, s. 3. Reg. III. of 1825, s. 4.

1st. The Sudder Adawlut. This court is stationed at the town of Madras, and is composed of a chief judge, who is a member of Council, and three puisné judges selected from among the "Company's covenanted servants;" but the members may be increased by the Local Government.

Act VII. of 1843, s. 2.

2d. The Zillah Courts. These courts are presided over by a single judge, who is called the Civil and Session Judge. By a proclamation of the Governor in Council, dated 28th July 1843, Zillah Courts were established at the following stations, viz.: 1. Bellary; 2. Cuddapah; 3. Chittoor; 4. Chingleput; 5. Cuddalore; 6. Nellore; 7. Guntoor; 8. Masulipatam; 9. Rajahmundry; 10. Chicacole; 11. Trichinopoly; 12. Combaconum; 13. Madura; 14. Tinnevelly; 15. Coimbatore; 16. Salem; 17 Mangalore; 18. Calicut; 19. Tellicherry; 20. Honore.

Reg. I. of 1827, s. 3. Act VII. of 1843, s. 2.

3d. The Subordinate Courts. These courts are presided over by a single judge, who is called the Subordinate Judge; and by the proclamation above referred to, Subordinate Courts were established at nine of the above stations, numbered respectively 1, 2, 3, 9, 12, 13, 16, 17, and 18.

The Uncovenanted Judges are,

Reg. VII. of 1827, s. 2. Act XXIV. of 1836, s. 1.

1st. The Principal Sudder Ameens; of these one was appointed by the same proclamation to eight of the remaining stations above referred to, numbered respectively 4, 5, 6, 7, 8, 11, 14, and 15; and one at each of the three following stations, viz.: Itchapoor, Vizagapatam, and Cochin.

2d. The Sudder Ameens.

3d. The District Moonsiffs.

Reg. IV. of 1816, ss. 2 and 3.

4th. The Village Moonsiffs.—The head man of the village is *ex officio* the Village Moonsiff. When there is more than one head man, the person who collects the revenue, and under whose authority the village servants acts, is to be considered the head of the village.

Jurisdiction.

Reg. IV. of 1816, s. 5.

Reg. V. of 1816, s. 2.

The **Village Moonsiff** has primary jurisdiction, 1st. In suits for sums of money or other personal property, the amount of which does not exceed ten Arcot† rupees. 2nd. He may summon a village *punchayet*, for the decision of any such suit without limitation as to amount, in the two following cases: 1st. Where the plaintiff and defendant agree that the matter in issue shall be decided without appeal by a village *punchayet*, and prefer a request in writing to that effect to the moonsiff, whether the parties reside in the village or not. 2d. Where one party to a suit prefers such a request in writing, and the other, being an inhabitant of the same village, on being summoned signifies his assent in writing. 3d. The village moonsiff is further authorized to try and determine as arbitrator suits relating to money or personal property not exceeding one hundred Arcot rupees, when voluntarily referred to him by the parties. Village moonsiffs are prohibited from trying any suit in which they or any of their immediate servants are personally interested, or suits against any person or persons not actually residing within their jurisdiction at the time when such suit shall be preferred.

Reg. IV. of 1816, s. 27.

Reg IV. of 1816, ss. 7 and 8.

Reg. V. of 1816, s. 3.

The **Village Punchayet** is to consist of an odd number, not less than five, nor more than eleven, and is to be composed of the most respectable inhabitants of the village, who are called upon to serve in rotation, under a penalty not exceeding five Arcot rupees, if they refuse. The majority decides.

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* The judicial system of Madras is founded on that of Bengal, and in the present outline it is only the points in which the systems differ that are particularly noticed.

† By Act XVII. of 1833, s. 4, it is enacted, that the Company's rupee shall be received as equivalent to the Bombay, Madras, Furruckabad, and Sonat rupees. By a previous Regulation the Madras rupee had been substituted for the Arcot at the same value.

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The DISTRICT MOONSIFF has primary jurisdiction over suits against any native inhabitant of his jurisdiction under the following limitations: for land exempt from the payment of rent to Government, the annual produce of which does not exceed one hundred rupees; for land subject to the payment of rent to Government, or other property, where the value of the matter in dispute does not exceed one thousand rupees. 2nd. He may summon punchayets within his jurisdiction for the decision of suits for real and personal property without limitation as to amount or value, in the same two cases as the village moonsiff is authorized to summon village punchayets. He is also authorized to hear and determine as arbitrator all suits which may be voluntarily referred to him by both parties, whether for real or personal property, of the value or amount before specified. He is prohibited from receiving or trying any suit for damages on account of personal injuries or for personal damages of any nature, without an order of reference from the Zillah Court. He is also prohibited from hearing and trying any suits in which himself or his relatives, or dependents or other persons employed in his cutcherry, are parties, or any British subject, or an European foreigner, or an American is a party.

Reg. VI. of 1816, s. 11. Reg. III. of 1833, s. 5.
Reg. VII. of 1816, s. 2.
Reg. VI. of 1816, s. 57.
Ibid. s. 12.

The DISTRICT PUNCHAYET is to be composed in the same manner as the village punchayet, but out of the inhabitants of the whole district, who are to serve in rotation under penalty of a fine not exceeding ten Arcot rupees, if they refuse. The decision is with the majority.

Reg. VII. of 1816, s. 3.

The number of district moonsiffs in each zillah is fixed by the Government, and their local jurisdictions may be modified from time to time by the zillah judge, with reference to the quantity of business, and the convenience of the population.

Reg. VI. of 1816, s. 5.
Reg. II. of 1823, s. 2.

The SUDDER AMEEN has primary jurisdiction in suits for land exempt from the payment of revenue, the annual produce of which shall not exceed 250 rupees, and in all other cases where the amount or value of the property in dispute does not exceed 2,500 rupees.

Reg. III. of 1833, s. 4.

When there is more than one Sudder Ameen in a zillah, it is the duty of the judge to appoint from time to time the several moonsiffs' divisions which shall constitute his special local jurisdiction, and then his power is limited to the cognizance of suits within these limits, unless when others are specially referred to him.

Act IX. of 1844, s. 3.

The PRINCIPAL SUDDER AMEEN has primary jurisdiction in suits where the amount or value of the property in dispute does not exceed 10,000 Company's rupees. His local jurisdiction is determined by the Governor in Council.

Act VII. of 1843, s. 4.
Reg. VII. of 1827, s. 2.

When there is more than one Principal Sudder Ameen in a zillah, the judge is to appoint the several moonsiffs' divisions, which are to form his special local jurisdiction in the same manner as in the case of the Sudder Ameen.

Act. IX. of 1844, s. 3.

The SUBORDINATE JUDGE has the same primary jurisdiction as the Principal Sudder Ameen, that is, to the extent of 10,000 Company's rupees.

Act VII. of 1843, s. 4.

The local jurisdiction of this judge, when one is appointed, is fixed by the Governor in Council.

Ibid. s. 3.

The ZILLAH JUDGE has primary jurisdiction in suits where the amount or value of the property in dispute is above 10,000 Company's rupees, exclusively of all other judges; and from the terms in which subordinate jurisdictions are defined, in the different regulations applicable to them, it appears that he has concurrent jurisdiction with all subordinate judges, and generally that every judge has primary jurisdiction concurrently with all the judges below him within his district.

Ibid.

APPELLATE JURISDICTION.

From decrees of the village moonsiffs there is no appeal.

Reg. IV. of 1816, s. 5, cl. 1.

From decrees of the village punchayets there is no appeal; but in cases of gross partiality the decision may be annulled by the zillah judge, on petition presented within thirty days from the date of the decree.

Reg. V. of 1816, s. 11, cl. 1.

From all decisions of the district moonsiff there is an appeal to the zillah judge in all suits for property in land, and in suits for money or other personal property, the amount or value of which exceeds twenty Arcot rupees; for money or personal property not exceeding that amount, the decree is final.

Reg. V. of 1825, s. 4.

The appeal may be referred by the Zillah judge to the Subordinate judge, or the Principal Sudder Ameen; or, when these judges are stationed at places remote from the station of the Zillah judge, the Sudder Adáwlut, with the sanction of Government, may order such appeals to be preferred to these Courts direct.

Reg. VI. of 1816. s. 43.
Act VII. of 1843, s. 8.

From the decisions of district punchayets there is no appeal; but the decree may be set aside for gross partiality, in the same way as that of the village punchayet.

Reg. VII. of 1816, s. 11.

From the decrees or orders of Sudder Ameens there is an appeal in all cases to the Zillah judge.

Act VII. of 1843, s. 8, cl. 1.

The Governor in Council may appoint an assistant judge to any Zillah Court; and the Zillah judge is authorized to refer to him appeals from decrees of Sudder Ameens as well as of Moonsiffs.

Act VII. of 1843, s. 52.

From the decrees or orders of the Subordinate judges and Principal Sudder Ameens there is an appeal to the Zillah judge: these appeals he cannot refer to the Assistant judge.

Act VII. of 1843, s. 8, cl. 1.
Ibid. s. 52.

From decisions and orders of the Zillah judge there is a regular appeal to the Sudder Adawlut. * And there is a further or special appeal to that Court from all decisions passed

Ibid. s. 9.

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Act XVI. of 1853, s. 4.

on regular appeals in any of the Civil Courts subordinate to it, on any of the following grounds, viz.: 1st. Where the decision has failed to determine all material points in difference, or has determined them contrary to law or usage, having the force of law; 2d. Misconstruction of any document; 3d. Ambiguity in the decision affecting the merits; 4th. Substantial error or defect in procedure, apparent on the record, and likely to have produced error or defect in the decision upon the merits of the case.*

LANGUAGE.

Reg. III. of 1802, s. 3.
Act XII. of 1843, s. 1.
Reg. XV. of 1816, s. 15.

The language of pleadings is either Persian or the language of the country where the Court is held. The language of so much of decrees as relates to the points to decided, the decisions and the reasons for the decisions, when the decree is that of a principal Sudder Ameen or moonsiff, is the vernacular of the judge; and when the decree is that of a Zillah Court, Subordinate Court, and Sudder Adawlut, the language is English.

SUBJECTS.

Commons Report for 1852, p. 692.

In the Madras territories, as well as in those of Bengal, much the larger number of suits is for debt, but the proportion of those for the rent of land is much less in the former than in the latter, as might be expected from the difference in the tenures of land. The suits of every description disposed of by all the judges in the twenty zillahs of the Madras Presidency (there are no complete returns for the three agencies of Ganjam, Vizagapatam and Kurnool) in the year 1850, were 78,427, of which 64,092 or about 81 per cent. were for debt, being a larger proportion than in Bengal. Of these 50,786 were secured by some instrument in writing called a bond, while the remaining 13,306 were for simple debts.†

Ibid. p. 696-7-8-9.

The distribution of the suits among the different judges was as follows: 15 were by the village Punchayets; 10,960 by the village Moonsiffs; 9 by the district Punchayets; 51,322 by the district Moonsiffs; 11,354 by the Sudder Ameens; 2,903 by the Principal Sudder Ameen; 1,916 by the subordinate judges, and 54 by the zillah judges. The numbers of the different judges were as follows:—district Moonsiffs 98, Sudder Ameens 34, Principal Sudder Ameens 10, subordinate Judges 10, Zillah Judges 20. Of the whole number of suits disposed of, only 30,485 were decided on their merits, the remaining 47,942 having been either settled between the parties, or dismissed on default or otherwise. Of the former number, 3,588 were by the village Moonsiffs, from whose decision there is no appeal; and 20,424 were by the district Moonsiffs, from whose decisions also, when the amount is under 20 rupees, there is no appeal. It seems that 9,184 were in this predicament, as out of the whole 20,424 only 11,240 were appealable. So that in the Madras Presidency 12,772 cases, or more than one-third of the whole number decided on their merits, were not subject to appeal, while in the Bengal Presidency there is an appeal in all cases.

PROCEDURE.

Reg. II. & III. of 1802.
Act XVII. of 1848, s. 2.
Reg. VII. of 1816. s. 19.

This follows very closely that of Bengal, the Madras regulations on the subject being as noted on the margin. The institution stamp is at the same rate; and it is now required on suits before the district Moonsiffs as well as in those before the superior judges. There is no institution stamp or fee in cases tried by the village Moonsiffs or village Punchayets; but in cases referred to the district Punchayet there is an institution fee of one per cent. where the value of the property in dispute is not more than 100 Arcot Rupees, two per cent. where it is not more than 200, and at the same rate for every succeeding hundred rupees.

Reg. XIII. of 1816, s. 16.

On the subsequent pleadings no stamp is required in the Courts of the Moonsiffs, village or district; in the Court of the Sudder Ameen the stamp is four annas; in the Courts of the Principal Sudder Ameen and subordinate judge it is one rupee; and in the Zillah Court and Sudder Adawlut it is two rupees.

PLEADINGS.

Reg. IV. of 1816, s. 14, cl. 2. Reg. VI. of 1816, s. 24.
Reg. V. of 1816, s. 4, cl. 6.
Reg. XV. of 1816. s. 10, cl. 3.

The pleadings are also generally the same as in Bengal. In the Courts of the village and district Moonsiffs they are limited to the plaint and answer. The same rule is applicable to cases referred to the village and district Punchayets. Points in dispute are to be recorded by the judge before calling for evidence as in Bengal.

EVIDENCE.

Reg. III. of 1802, s. 7.
Act XIX. of 1853.

There is little to be noticed under this head. Documentary evidence as in Bengal must be proved by witnesses, if disputed. By a recent Act of the legislature of India, a party to a suit is declared competent and entitled to give evidence as a witness on his own behalf, or on behalf of any other party to the suit; and any party to the suit may be compelled on the requisition of the other to give evidence, if so ordered by the judge. But the provisions of this Act are confined to Bengal.

* This Act is applicable to all the Presidencies, and has repealed all former rules for the admission of special appeals.

† With regard to what may be called commercial suits, it would seem at first that there were a great many of that description; for among plaintiffs and defendants, 52,777 of the former, and 60,373 of the latter, are classed under the head of *Muhajuns*, &c.—a word which is commonly applied to merchants. But it is probable that the persons here alluded to are the village *Muhajuns*, or petty bankers, by whom advances are made to the ryots, to enable them to cultivate their lands, and on condition of repayment out of the produce at the end of the season.

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HEARING OF THE CAUSE.

Under this head there seems to be nothing which requires particular notice, except that there is no provision for the employment of assessors in civil cases in the Madras Presidency. The returns of cases decided by the different Courts do not afford the means of distinguishing the number of suits that may have been decided according to Hindoo or Mahomedan law, or by special rules contained in the regulations, or according to justice, equity, and good conscience. Act VII. of 1843, s. 32.

JUDGMENT.

All that requires special notice under this head, refers to the language of the judgment, and has been already specified under the head of language.

EXECUTION.

The decisions of the village Moonsiff, either as Moonsiff or arbitrator, cannot be carried into execution in less than thirty days after delivering or tender of copy of the decree. If a petition is presented within this time charging the Moonsiff with corruption or gross partiality, the judge may stay execution; and if the charge be proved to his satisfaction he may annul the decree. If the sum decreed is not discharged within the above period, or the execution stayed, the village Moonsiff may proceed to execute his decree by attachment of the property of the person cast to the value of the sum decreed. Reg. IV. of 1816, s. 29. Ibid. s. 30.

Decrees of village Punchayets, when the amount or value of the money or property decreed does not exceed 100 Arcot rupees, are to be carried into execution by the village Moonsiff. Decrees exceeding that amount or value, and not exceeding 200 Arcot rupees, are to be executed by the district Moonsiff; and in all other cases by the Zillah Judge. Reg. V. of 1816, s. 16.

Decrees of district Moonsiffs may be carried into execution by themselves, but thirty days from the date of tender of the copy of the decree are allowed to the party against whom it may have passed to discharge it. If not discharged within that time, the decree is to be executed in the same way as decrees are executed in Bengal; and if the decree be for money, by attachment of the property or person, or both if necessary. Reg. VI. of 1816, s. 42. Ibid. s. 46.

Decrees of district Punchayets, if for land exempt from payment of rent to Government the annual produce of which does not exceed 20 rupees, or for land subject to the payment of rent to Government the annual produce of which does not exceed 200 rupees, or for sums of money or other personal property the amount or value of which does not exceed 200 rupees, are carried into execution by the district Moonsiff; in all other cases by the Zillah Judge. Applications for execution of these decrees may be referred by the Zillah Judge to the Subordinate judges and Principal Sudder Ameens. Reg. VII. of 1816, s. 16, cl. 1. Ibid. cl. 2. Act VII. of 1843, s. 20.

The decrees of Sudder Ameens are carried into execution by themselves, according to to the rules for the execution of decrees applicable to the Court to which they are attached. Act VII. of 1843, s. 25.

The decrees of the Principal Sudder Ameens, the Subordinate Court, the Zillah Court, and the Sudder Adawlut, are carried into execution by the Court in which the decree was passed. The process for execution of decrees of the Sudder Adawlut is directed to the judges of the Zillah Courts; but these judges may refer the execution of the decrees of the Sudder Adawlut, as well as the decrees of their own Courts to the Subordinate judges or Principal Sudder Ameens. Reg. XV. of 1816, s. 14. Act VII. of 1843, s. 13. Ibid. s. 14.

REVIEW OF JUDGMENTS.

The rules regarding reviews of judgment are the same in the Madras as in the Bengal Presidency; but it is only the judges of the Sudder Adawlut, the Zillah Court, the Subordinate Court, and the Principal Sudder Ameen that are allowed to review their own judgments. In all cases, the order of the judge refusing the review is final; but when the application for review of judgment is made to a Zillah judge, Subordinate judge, or Principal Sudder Ameen, and he is of opinion that the review should be granted, he is to report the same to the Sudder Adawlut with the grounds of his opinion, and that Court is empowered to grant the review if it should think proper. Reg. XV. of 1816, s. 6. Ibid.

APPEAL.

The petition of appeal may, in all cases, be presented either to the Court in which the decree was passed, or to the Court having appellate jurisdiction. Thirty days are allowed for the appeal from the Moonsiffs, Sudder Ameens, Principal Sudder Ameens, and Subordinate judges to the Zillah Court, and three calendar months for the appeal from the Zillah Court to the Sudder Adawlut: the time to be computed in all cases from the date on which the decree is sealed and signed: provided that if a copy of the decree or translation of the abstract of it be applied for within the time, and be not delivered or tendered on the same day to the party applying, then for every day of the delay so occasioned, a day shall be added to the period allowed for appealing. Reg. V. of 1802, s. 10. Reg. XV. of 1816, s. 8. Act VII. of 1843, s. 8. Reg. V. of 1802, s. 5; Act VII. of 1843, s. 9. Act XXXV. of 1837, s. 3.

SUSPENSION OF EXECUTION.

If an appeal is preferred from the decree of a District Moonsiff, execution of the decree shall be suspended, or otherwise, according to the orders he may receive from the Zillah Reg. VI. of 1816, s. 44.

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Reg. XII. of 1809, s. 11. Reg. XV. of 1816, s. 14.

Act VII. of 1843, s. 10, cl. 4. Ibid. s. 10, cl. 2.

Judge. If the appeal be from the decision of a Sudder Ameen, Principal Sudder Ameen or Subordinate judge to the Zillah Judge, the rules in regard to execution or suspension are the same as in Bengal. In all cases where the appeal is to the Sudder Adawlut a single judge of that Court may stay execution till final judgment, whenever he may think it expedient. In other respects the practice is the same as in Bengal; a single judge of the Sudder and the judges of Zillah Courts, Subordinate judges, and Principal Sudder Ameens having power to confirm the decision of the lower Court without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, if they shall be of opinion that no sufficient grounds have been shown for impugning the correctness or justness of the decree.

Practice of the Sudder Adawlut in Appeals.

Reg. VII. of 1831, s. 4.

Act. VII. of 1843, s. 10, cl. 2.

This is the same in regard to the pleadings as in Bengal, but the judges sit separately, one judge being empowered, under certain restrictions, to exercise the powers of the whole Court. The restrictions are, that it is not competent to a single judge to reverse any order or decision of one or more judges of the Court, or any order or decision of a Subordinate Court; but a single judge is competent to confirm the decision of the Subordinate Court; and when he is of opinion that the decision or order appealed from ought to be altered or reversed, as being unjust or at variance with some regulation in force, or the Hindoo, Mahomedan or other law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous or irrelevant with reference to the points at issue; it is competent to a single judge to give an injunction pointing out the illegality, irregularity, or defect, and requiring the subordinate Court to revise the case and proceed thereon according to the regulations.

General Business of the Sudder Adawlut.

Commons Report, 1852, p. 711.

The business disposed of by the Sudder Adawlut at Madras during the year 1850 comprised 54 cases of regular appeals, 597 petitions, and 205 applications for special appeals. Of the regular appeals two were dismissed for default, and 52 decided on the merits, among which 12 were decided in favour of the appellants, 9 in favour of the respondents, and the remaining 31 were remanded.

Appeals to the Privy Council.

Reg. VIII. of 1818, Act II. of 1844.

The rules for the admission of appeals from the Sudder Adawlut at Madras, and in regard to the execution of decree, security, and expense of translations, are the same as in Bengal. The regulations on the subject are noted on the margin.

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Outline of the Constitution and Procedure of the East India Company's Courts of Criminal Judicature in the Presidency of Madras.*

JUDGES AND JURISDICTIONS.

The Foujdary† Adawlut.

Reg. III. of 1807, s. 3.

The Judges of this Court are the same as those of the Sudder Adawlut, and they have a general superintendence over the administration of criminal justice and the police.

The Session Judge.

Act VII. of 1843, s. 26.

The same person is the Civil and Session Judge of the Zillah. His original jurisdiction is limited to persons committed by the Subordinate Judges and Principal Sudder Ameens to take their trial at the sessions for crimes or offences.

Reg. VI. of 1822, s. 2, 3, and 4.

The crimes and offences for which persons are to be committed to the sessions for trial, are the same as those specified in the outline for Bengal, with some immaterial differences, and this distinction, that the committing officer is the Subordinate Judge or Principal Sudder Ameen, instead of the magistrate.

Subordinate Judge and Principal Sudder Ameen.

Ibid.

The original jurisdiction of these Judges is limited to the trial of cases forwarded to them by the magistrates and heads of the district police, and which they are not required by the regulations to commit for trial at the sessions. Their powers of punishment are

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* The judicial system of Madras, criminal as well as civil, is founded on that of Bengal; and in the present outline it is only the points in which the criminal systems differ that are particularly noticed.

† From Foujdar, the general or holder of a *fouj* or army.

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generally the same as those of the magistrate in Bengal; but corporal punishment has not been abolished at Madras, and the power of punishment is limited to two years' imprisonment with hard labour, and 150 lashes with a cat-of-nine-tails*.

It is competent to the Governor in council, by an order in council, to authorize the Principal Sudder Ameen to exercise the same powers as a magistrate in respect of all persons sent before him by any head of police, charged with offences punishable by a magistrate. These powers apply to the trial and punishment of minor offences which would not come under the ordinary jurisdiction of the Principal Sudder Ameen, as hereinafter more particularly mentioned. Reg. VI. of 1822, s. 2, cl. 6. Reg. VIII. of 1827, s. 14.

Sudder Ameen.

The Subordinate Criminal Judge and Principal Sudder Ameen are authorized to employ the Sudder Ameens in the investigation and decision of criminal cases; and when so employed, the Sudder Ameens are to be guided by the rules laid down for the guidance of the criminal judges in similar cases, and to exercise the powers conferred upon these officers by the regulations. The decision of Sudder Ameens, in cases in which they may be thus employed, are subject to be overruled by the Session Judge. Reg. III. of 1833, s. 2. Act VII. of 1843, s. 36.

The Magistrate.

The duties of the magistracy, both judicial and police, are combined with the collection of revenue.

The collector of revenue, who must be a covenanted civil servant, is the magistrate of his zillah, and at the head of the police. He has a police establishment under him, but it is not distinct from the revenue establishment, the same persons being equally employed in police and revenue duties, as occasion may require. Reg. II. of 1803, s. 2. Reg. IX. of 1816, s. 3. Ibid. s. 47.

The Subordinate or Sub-Collector, who is also a covenanted civil servant, is the joint magistrate. Reg. II. of 1827, s. 5.

The Assistant to the Collector, also a covenanted civil servant, is assistant to the magistrate. When there is more than one assistant, one of them is termed the Head Assistant. Reg. IX. of 1816, s. 4.

The Tahsildar, or Native Collector of a District, is ex officio the head of the police of that district. Reg. XI. of 1816, s. 25.

The Head of a Village, who is also the village Moonsiff, and usually the person who collects the revenue, is ex officio head of the police of the village. Ibid. s. 4.

Judicial Powers of the Magistrate.

The magistrates are authorized to hear and determine, without reference to any authority, all complaints or prosecutions for petty offences, such as abusive language, calumny, inconsiderable assaults or affrays, and to punish the offender, when convicted, by imprisonment in the Zillah gaol or village choultry, for a term not exceeding fifteen days, or by imposing a fine not to exceed in any case the sum of 200 rupees. Reg. IX. of 1816, s. 32. They are also authorized to hear and determine in like manner all complaints or prosecutions for petty thefts, when not attended with any aggravating circumstances, or not committed by persons of notorious bad character, and to inflict on the offenders corporal punishment not exceeding 90 lashes of a cat-of-nine-tails, or commit them to prison in the Zillah gaol or village choultry for a term not longer than one month. Ibid. s. 33. The magistrate is further authorized to try, determine, and punish to the same extent, petty cases of poisoning or maliciously killing, maiming, or wounding cattle, when the cases are of a petty description. Reg. XIII. of 1832, s. 8, cl. 2. And by the enactment noted in the margin his powers are extended to those vested in criminal judges, by section 7 of Regulation X. of 1816; that is, in the cases in which the penalties authorized by sections 32 and 33 of Regulation IX. of 1816 are insufficient, to pass sentence of imprisonment not exceeding six months, with corporal punishment not exceeding 150 lashes, in cases of theft, or, in other cases, with a fine not exceeding 200 rupees, commutable, if not paid, to a further period of imprisonment not exceeding six months. Act VII. of 1843, s. 54. These powers are vested in the magistrate concurrently with the criminal judges. But in every case in which he exercises such additional powers, an appeal from his sentence or order may be preferred to the Session Judge within one month. Ibid. s. 56.

Judicial Powers of the Joint Magistrate.

His powers are the same as those of the magistrate in the portion of the district placed under his charge. But the exercise of such powers are not to supersede the authority of the magistrate, but to be subordinate thereto as far as occasion shall require. Reg. II. of 1827, s. 5. Ibid. cl. 3.

Judicial Powers of the Assistant to the Magistrate.

This jurisdiction is limited to cases which may be referred to him by the magistrate; and he is authorized to exercise the judicial powers vested in the magistrate by Regula- Reg. IX. of 1816, s. 6.

* Corporal punishment under Reg. VI. of 1822, s. 2. cl. 6. was limited to thirty stripes of the rattan; but by Reg. VIII. of 1828, s. 2, the use of the rattan was abolished, and by s. 4. five lashes of a cat-of-nine-tails were made equivalent to one stripe of a rattan.

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tion IX. of 1816, so far as may be necessary to enable him to perform the duties committed to him by the magistrate.

Judicial Powers of the Tahsildar.

Reg. XI. of 1816, s. 33.

In cases of a trivial nature, such as abusive language and inconsiderable assaults or affrays, when complaints are preferred to a Tahsildar, he is to inquire into the same, and if the offence be proved, he has authority to punish the offender by fine, or imprisonment in the choultry for a time not exceeding twenty-four hours, or if he be of the lower castes, by putting him in the stocks for a time not exceeding six hours. The fine may not exceed three rupees, commutable to imprisonment not exceeding three days without labour.

Reg. IV. of 1821, s. 5. Reg. XIII. of 1832, s. 5, cl. 2.

Reg. IV. of 1821, s. 4, cl. 1.

The Tahsildar, as head of the district police, is further empowered to hear and determine cases of petty theft, not attended with aggravating circumstances, nor committed by persons of notoriously bad character, and on conviction of the accused, when the property stolen shall not exceed five rupees, to pass sentence of imprisonment not exceeding ten days with labour, but not to inflict stripes. Whenever, while investigating under the authority vested in him by the above regulation, he may be of opinion that the punishment which he is empowered to inflict is not adequate to the offence committed, he is to report the case to the magistrate, who will either issue his orders in writing to the head of the district police, to inflict such punishment as the magistrate shall deem sufficient, or order the parties and witnesses to be forwarded to him for further investigation. Heads of district police are to report to the magistrate all punishments which they may inflict under clause first of this section. Tahsildars and other police officers acting under them, are expressly prohibited from taking cognizance of cases of adultery or fornication.

Reg. XIII. of 1832, s. 5.

Reg. IV. of 1821, s. 4, cl. 2.

Ibid. cl. 4.

Reg. XI. of 1816, s. 46.

Ibid. s. 38.

In districts where from the land rent being paid directly to the collector, there may be no Tahsildars, the magistrate is directed to grant to the most respectable native servant employed in the collection of the customs or other dues of government, the same police authority as is vested in the Tahsildars.

Zemindars.

Reg. XI. of 1816, s. 39.

Magistrates may grant on their own responsibility to Zemindars desirous of acting as heads of police, sunuds to act as such within the limits of their own Zemindaries only, with the whole of the duties and authority of Tahsildars, or such part thereof as they may think proper.

Judicial Power of Heads of Villages.

Reg. XI. of 1816, s. 10. Reg. IV. of 1821. s. 6.

In trivial cases, such as abusive language and inconsiderable assaults or affrays, and in petty thefts not attended with aggravating circumstances, nor committed by persons of notoriously bad character, and where the value of the stolen property does not exceed one rupee, the heads of villages have the same powers of hearing and determining as are vested in the heads of district police; but they have no power to inflict a fine, nor imprisonment for more than twelve hours. They are to report to the head police officer of the district, all cases of petty theft, in which they shall have exercised the power of punishment vested in them.

Ameen of Police.

Reg. XI. of 1816, s. 40.

In large towns where it may be found that the police duties cannot be conducted by the head inhabitant, the magistrate is to appoint a person to act as Ameen of police, either immediately under his own orders, or under the Tahsildar of the district; and either with the police powers vested in heads of villages, or with those vested in Tahsildars, as may appear pexedient.

Reg. IV. of 1821, s. 2.

The local limits of the jurisdiction of Ameens of police may be extended by the magistrates, as their discretion, to any distance they may see fit beyond the towns to which such Ameens have been appointed.

Act XXX. of 1837.

The judicial and police powers of Ameens of police vested with the police powers of Tahsildars, are the same as the judicial powers of these officers.

Reg. XI. of 1816, s. 41.

In towns where from the resort of Europeans the employment of a native as Ameen of police may be insufficient, an assistant magistrate is to be stationed with the same police authority as is granted to the magistrate.

Exception to Jurisdiction.

Act XXIV. of 1836, s. 4.

The exception as to British subjects, and their liability when appointed to the offices of Principal Sudder Ameen, Sudder Ameen, and Moonsiff, are the same as in Bengal. But Europeans, who are not British subjects, and Americans are exempted from the criminal jurisdiction of native judges in the Madras Presidency, while in Bengal there is no such exemption.

Act XXXIV. of 1837, s. 2.

Act VII. of 1843, s. 43.

By the enactment noted in the margin, it is declared to be unlawful for a magistrate to send Europeans and Americans to a Principal Sudder Ameen for trial or committal; and whenever such persons are charged with offences not punishable by the magistrate, committed within the local jurisdiction of the Principal Sudder Ameen, they are to be sent for trial to the Session Judge.

There are some special enactments which impose fines, and, in some instances, imprisonment, for particular offences, and all persons are made amenable in regard to such offences to the justices of the peace and other magistrates. Act XVII. of 1837, which relates to the Post Office, Act XXXI. of 1838, in regard to growing trees or plants, and Act V. of 1844, "for the suppression of lotteries," are of this description; and in these there is no exception of British subjects. In other Acts British subjects are made liable in more express terms to the jurisdiction of the East India Company's criminal courts. Thus by Act XXXII. of 1845, s. 4, it is enacted that European British subjects, as well as other parties, guilty of the offences specified in Regulation I. of 1820 of the Madras code, in regard to the sale of spirituous liquors, shall, on conviction before a Sessions Judge or Subordinate Judge of the Zillah, be subject to the penalties therein specified with the exception of hard labour; and by Act XIX. of 1850, "concerning the binding of apprentices," it is declared that all British subjects, wherever or of whatever parents born, shall be amenable for the purposes of the Act to the jurisdiction of the courts and magistrates of the East India Company.

PROCEDURE.

Complaints may be made to the heads of villages, or to the Tahsildars, or the magistrates.

Heads of villages are authorized and directed to apprehend all persons charged with committing crimes or offences or breaches of the peace; and except in the trivial cases, wherein they are authorized to inflict punishment, they are to forward the persons whom they may apprehend to the police officer of the district. Reg. XI. of 1816. s. 5.

Upon a complaint being made to a Tahsildar of any murder, robbery, house-breaking, theft of a considerable amount, or attended with aggravating circumstances, setting fire to a house or other buildings, counterfeiting the coin, or other heinous offence, or upon the arrival of persons charged with any heinous offence, who may have been apprehended and forwarded to the Tahsildar by heads of villages, he is to make inquiry into the truth of the charge, and if it appear worthy of credit, he is to apprehend the person or persons accused, and having taken down the depositions of the witnesses, he is to forward his proceedings with the prisoner and witnesses to the Criminal Judges of the Zillah,—that is, to the Subordinate Judge, or the Principal Sudder Ameen, according as the case may be. Reg. XI. of 1816, s. 27, cl. 1. Ibid. s. 29.

In cases of bailable offence or misdemeanor, the Tahsildar is to summon the party accused, and having taken his declaration in writing, and if necessary the depositions of any witnesses to the truth of the charge, he is then to take security for the appearance of the party with the accuser and witnesses on a stated day before the magistrate, and immediately to report the case and transmit the depositions. Reg. XI. of 1816, s. 31.

When the case is of the trivial nature which falls within his own competence to punish, he will proceed to dispose of it summarily himself. Ibid. s. 33.

When a complaint is preferred to a magistrate in the first instance, or a case is reported to him by the Tahsildars, he will proceed generally in the same way. If it appear that the crime wherewith the prisoner is charged was not committed, or that there is no evidence against him, he will forthwith discharge him. If on the contrary he should think that the crime was committed, and that there is evidence against the prisoner, he will, according to the nature of the case, forward the proceedings to the Subordinate Judge or Principal Sudder Ameen, or dispose of the case summarily himself, or, if he think proper, refer it to one of his subordinates. Reg. IX. of s. 24.

Upon a prisoner being brought before the Subordinate Judge or Principal Sudder Ameen, if it shall appear upon a perusal of the depositions taken before the magistrate or any competent officer of police, that there is evidence of the prisoner being concerned in the perpetration of the crime or misdemeanor with which he is charged, and if the deponents confirm their depositions on oath before him, it is competent to the Subordinate Judge or Principal Sudder Ameen, without further investigation, to commit the prisoner to take his trial before the Session Judge. But if the crime or misdemeanor be punishable by the judge himself, he may adjudge such punishment as he may deem proper and is within his competence to inflict. Act VII. of 1843, s. 29. Reg. X. of 1816, s. 9, cl. 2.

TRIAL BEFORE THE SESSION JUDGE.

The Judges are to hold permanent sessions for the trial of persons who shall be committed for trial by the Subordinate Judges and Principal Sudder Ameens. Act VII. of 1843, s. 27.

The preliminaries are the same as in Bengal, except that they are conducted by the officers last mentioned, instead of the magistrates. Reg. X. of 1816, s. 20.

The trial may be in either of the two ways indicated in the outline for Bengal. When it is with the aid of the Mahomedan law officer alone, the proceedings are precisely the same. When the Judge takes the assistance of other persons, there are these differences between the enactments applicable to Bengal and Madras. In the former the Judge is restricted in his choice to respectable natives; in the latter he may take other persons as well as respectable natives. In the former he has his choice of a Punchayet, assessors, or jury; in the latter he is restricted to the two last. In the former the Mahomedan law officer sits as such with the Judge, though his futwa may be dispensed with; in the latter he does not sit in his capacity of law officer, but may be assumed by the Judge as one of the assessors or jury. In the former the decision of fact is always with the Judge, and it Act VII. of 1843, s. 31, 32.

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is only when the futwa is dispensed with, and the crime is one which the Judge is not specifically empowered by the regulations to punish, that he is obliged to refer the case for the consideration of the Nizamut Adawlut, and then he is required to refer it, whether he agree with the assessors, or jury, or not; in the latter he is in no case to carry his decision into effect when he differs from the assessors or jury, unless confirmed by the Court of Foujdary Adawult, to which the case is to be immediately referred. In the former any person not professing the Mahomedan faith may claim to be exempted from trial under the provisions of the Mahomedan Criminal Code, and in such case the Judge is required to comply with such requisition, and to proceed in one of the three modes above referred to,—that is, with the assistance of respectable natives as a Punchayet, assessors, or jury; in the latter no person can claim such exemption, and it is left to the discretion of the Judge in all cases, whether he will sit with the Mahomedan law officer or avail himself of the assistance of assessors or jury.

THE LAW.

The criminal law is generally the same as in Bengal,—that is, it is Mahomedan law modified by regulations of the Governor in Council, and Acts of the Council of India.

EXECUTION OF SENTENCE.

Reg. VII. of 1802, s. 15, cl. 2, s. 22. Act VII. of 1843, s. 32, cl. 3.

When the sentence is for death, or imprisonment for life, or the judge disapproves of the futwa, or differs in opinion from the assessors or jury, it cannot be carried into execution without the orders of the Foujdary Adawlut.

APPEALS.

There is an appeal to the magistrate from his subordinates in practice, though there does not appear to be any express provision for it under the regulation. In this sense the subordinates to the magistrate are his assistants, and sometimes the joint magistrate. From the sentences or orders of the magistrates there is an appeal to the Session Judge within one month. There is also an appeal to the Session Judge from the sentences or orders of Sudder Ameens, Subordinate Judges, and Principal Sudder Ameens, in criminal cases. And from the sentences or orders of the Session Judge there is an appeal to the Foujdary Adawlut, one Judge of which is competent to reverse or alter the sentence or order, provided such alteration or reversal be in favour of the accused.

Act VII. of 1843, s. 55. Ibid. s. 36. Act VII. of 1843, s. 33.

PROCEDURE IN APPEALS.

There is no particular time specified within which the petition of appeal must be presented, except in the case of an appeal from the magistrate to the Session Judge, under section 55 of Regulation VII. of 1843; and as the right of appeal in other cases seems to be limited to that of presenting a petition relative to the proceedings of the criminal judge, it would seem that it is discretionary with the judge to call for the proceedings or not, as he may think proper, as was the practice in Bengal until Act XXXI. of 1841 was passed, which has been held to make the appeal a matter of right, and to obligate the appellate authority to call for and review the proceedings of the Lower Court. The language of section 55 of Act VII. of 1843 seems to be equally imperative, but it is not known whether the same construction has been put upon it by the Judges of the Foujdary Adawlut.

Reg. X. of 1816, s. 24.

REVISION OF PROCEEDINGS OF LOWER BY SUPERIOR CRIMINAL COURTS.

The practice in regard to monthly statements and abstracts does not appear to differ from that in Bengal, and the Session Judges and Judges of the Foujdary Adawlut, exercise the same general powers in revising and altering the sentences and orders of the criminal authorities subordinate to them as are exercised by the Sesssion Judges and Judges of the Nizamut Adawlut in Bengal.

Act IX. of 1828, s. 3.

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APPENDIX B.—No. 7.

OUTLINE OF THE CONSTITUTION AND PROCEDURE OF THE EAST INDIA COMPANY'S COURTS OF CIVIL JUDICATURE IN THE PRESIDENCY OF BOMBAY.*

THE JUDGES.

These are Covenanted and Uncovenanted, as in the other Presidencies.

The Covenant are,—

1st. THE JUDGES OF THE SUDDER DEWANNY ADAWLUT.—This court consists of three or more judges, the senior of whom is denominated chief judge, and the other puisne, or second, third, fourth, &c. The chief judge is a member of Council, and his judicial

Reg. II. of 1827, s. 2. Reg. I. of 1830, s. 2.

* Those points only in which the judicial system of Bombay differs from the systems of Bengal and Madras are noticed in this outline.

functions are limited to his officiating as chief judge when a competent court for the decision of the matter under consideration cannot otherwise be had.

2d. THE JUDGES OF THE ZILLAH COURTS.—There is one such court in each Zillah, and it is presided over by a single judge. The numbers and limits of the Zillahs may be altered at all times by the Government. At present there are eight, and their names are as follows:—Ahmedabad, Surat, The Konkun or Tannah, Poonah, Sholapoor, Ahmednuggur, Khandesh, and Dharwar. Reg. II. of 1827, s. 16.

3d. THE JUDGES OF THE SUBSIDIARY COURTS.—These are the Courts of the assistants to the Zillah judges; and each Zillah judge may, if necessary, have one or more senior assistant judges, and one or more junior assistant judges. The senior assistant judges hold their courts either at the Suddur station, or at a detached station within the Zillah. Ibid. s. 28.

The Uncovenanted Judges are,—

1st. THE PRINCIPAL SUDDER AMEENS.

2d. THE SUDDER AMEENS.

3d. THE MOOONSIFFS.

The uncovenanted judges were at first termed native commissioners. They were then divided into three grades, and called native judges, and principal and junior native commissioners. Finally, their names were changed as above. Reg. II. of 1827, s. 37. Reg. I. of 1832, s. 1.

The whole of the preceding may be distinguished as the ordinary judges, from other officers who are vested with judicial powers of a special character, and who may also be divided into Covenanted and Uncovenanted.

The Covenanted Officers of this class are,—

1st. THE COLLECTORS OF REVENUE.—The local jurisdiction of a collector is sometimes co-extensive with a Zillah; sometimes a Zillah comprises two collectorates. Thus, the Zillah of Ahmedabad comprises the collectorates of Ahmedabad and Kaira; Surat comprises Surat and Broach; The Konkun or Tannah comprises Tannah and Rutnageeree; Ahmednuggur comprises Ahmednuggur and Nassick; and Dharwar comprises Dharwar and Belgaum.

2d. SUB-COLLECTORS.—In such Zillahs as the Governor in Council deems expedient, he may appoint a Principal Collector and one or more Sub Collectors. At present there is no Principal Collector, and only two Sub-Collectors; viz., of Nassick, under the Collector of Ahmednuggur; and of Colaba, under the Collector of Tannah. Reg. V. of 1830, s. 2.

3d. ASSISTANTS TO THE COLLECTORS.—Each Collector may have as many assistants as the Governor in Council may deem it expedient to appoint, to be called first, second, &c., as may be expressed in the order of appointment. Reg. XVI. of 1830, s. 5.

4th. AGENT FOR THE SIRDARS IN THE DEKKAN, who are exempted from the jurisdiction of the Civil Courts.

5th. THE POLITICAL AGENT in the Southern Mahratta Country.

The Uncovenanted Officers of this class are,—

1st. DEPUTY COLLECTORS.

2d. THE NATIVE COLLECTORS, termed KOMAVISDAR,* or MAMLUTDAR.*

3d. JAGEERDARS, SURINJAMDARS, and ENAMDARS.†

REMUNERATION OF PLEADERS.

The rates of remuneration in the Bombay Presidency are somewhat lower than in Bengal and Madras. Thus, in a regular suit for 5,000 rupees the fee is only 120 rupees in Bombay, while it is 250 rupees in the others; and on 80,000 rupees it is only 620 rupees in Bombay, while it is 1,000 rupees in the other Presidencies. But, on the other hand, the pleader's fee can never exceed the last sum in these Presidencies, whatever may be the amount of the suit, while in Bombay the rate is half per cent. on the whole sum above 20,000 rupees, whatever may be the amount of the matter at issue. It is only when costs are awarded to a party in a regular suit or appeal, decided on the merits against another party, that the fees of pleaders are calculated by these rates. As between parties and their own pleaders, fees are determined by private agreement. Reg. II. of 1827, s. 52. Act I. of 1846, s. 7.

ORIGINAL JURISDICTION.

The MOONSIFF has original jurisdiction in all suits to the amount of 5,000 rupees, except in regard to matters which fall under any of the special jurisdictions herein-after mentioned, and with the exception of suits against public servants for acts done in their official capacity; and also of suits to which his dear relation, or one of his immediate servants or dependents, is a party; provided, however, that in all suits tried by the Moon- Reg. I. of 1832, s. 3. cl. 2. Reg. II. of 1827, s. 43. Ibid. s. 37.

* These are different names for the same officer. Each collectorate is divided into a certain number of Talooks (varying from five to eighteen), over each of which there is a Mamlutdar. Talooks are frequently subdivided into two or more Mahals, over which there is an officer called a Mahalkaree, but he has no civil jurisdiction.

† Holders (dar) of land in Jageer, Surinjam, and Enam. The Jageer was originally an assignment on the revenues of a particular district, as the grant of a certain sum out of the revenues; but it was sometimes considered, particularly in Bombay, as being more in the nature of an absolute assignment of the district itself. The Surinjam was an assignment for particular service whether personal, military, or official. Enam means a present or gift of any kind.

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siff the defendant reside within the limits of his jurisdiction. The plaint is to be presented at the Sudder station in the Court of the Zillah Judge, or elsewhere in the Court of the Moonsiff himself.

Reg. IV. of 1827, s. 2. Reg. I. of 1832, s. 3. cl. 2. Act IX. of 1844, s. 3.

The Sudder Ameen is authorized to try all suits to the amount of 10,000 rupees, with the same exceptions as are applicable to the Moonsiff; but it is not necessary that the defendant should in all cases be resident within his jurisdiction. All suits within the competency of the Sudder Ameen are ordinarily to be instituted in his own court. When there is more than one Sudder Ameen in a Zillah, it is the duty of the judge to appoint, from time to time, the several Moonsiffs divisions which shall constitute the local jurisdiction of each Sudder Ameen.

Act IX. of 1844, s. 3. Reg. I. of 1830, s. 5. cl. 1.

The Principal Sudder Ameen.—When there is more than one in a Zillah, his local jurisdiction is to be fixed in the same way as that of the Sudder Ameen. He is authorized to try all suits without any limit as to amount, but subject to the same exceptions above mentioned; and in other respects, as in the case of the Sudder Ameen.

Reg. II. of 1827 s. 21.

The Zillah Judge.—His jurisdiction extends to the cognizance of all original suits and complaints within his Zillah, with the exception of such cases as fall within the special jurisdiction of the collectors, and with the further exception in particular Zillahs of cases coming within the special jurisdictions of the agents for Sirdahs, the political agent in the southern Mahratta country, and the Jageerdars, Surinjamdars, and Enamdars, as hereinafter more particularly mentioned. In practice, it is understood that the Zillah Judge exercises no original jurisdiction, except in cases which subordinate judicial officers are not competent to try.

Ibid. s. 37.

The Zillah Judge is empowered to refer original suits to the Principal Sudder Ameen, Sudder Ameen, and Moonsiff, respectively, according to the amount of the property in dispute; provided the suits are such as these officers are respectively competent to try, as not falling under any of the exceptions specified under the jurisdiction of the Moonsiff.

Reg. II. of 1827, s. 42. Act IX. of 1844, s. 1. Ibid. s. 2.

For special reasons he may refer a suit to two or more Principal Sudder Ameens, Sudder Ameens, or Moonsiffs; and though suits, within the competency of these judges to decide, are ordinarily to be instituted in their own courts respectively, it is competent to the judge to withdraw any suit from the court in which it may have been instituted, and to try it himself, or to refer it for trial to any other court subordinate to his authority, and competent in respect to the value of the property.

Act XXIX. of 1845, s. 1.

The Joint Judge.—Whenever the state of business in any Zillah may require it, the Governor in Council of Bombay may, with the consent of the Governor-General of India in Council, appoint a joint judge, who shall be vested with co-extensive powers and a concurrent jurisdiction with the Zillah Judge, except that he shall not keep a file of civil suits, but shall transact such civil business only as he may receive from the judge.

Reg. II. of 1827, s. 28. Reg. I. of 1830, s 3. Reg. II. of 1827, s. 28. cl. 5 & 6.

The Assistant Judges.—Their jurisdiction is limited to suits referred to them by the judge, but the judge is forbidden to refer any original suit to his assistants, with the exception of those which he cannot refer to the Principal Sudder Ameen, Sudder Ameen, or Moonsiff, as falling within those which they are not competent to try. Such suits may be referred to the extent of 5,000 rupees ordinarily, and 10,000 rupees specially, to the Senior Assistant Judge; and of 500 rupees, to a Junior Assistant Judge.

Reg. XVII. of 1827, chap. viii. s. 31. Act XVI. of 1838, s. 1. cl. 2. Reg. XVII. of 1827, chap. x.

The Collector.—This officer has original jurisdiction. 1st. Of all disputes regarding the rent of lands. 2d. Of all questions regarding the use of wells, tanks, watercourses, and roads to fields. 3d. Of all disputes regarding boundaries. 4th. He has a summary jurisdiction to give immediate possession of all lands, premises, trees, crops, fisheries, and of all profits arising from the same, to any party dispossessed thereof, provided application be made by such party within six months from the date of dispossession; the party to continue in possession until ejected by a decree of the Court of Adawlut. 5th. The Collector is vested with full powers for examining into and deciding upon all claims to exemption from the payment of land revenue, and for discontinuing such exemptions when not duly established.

Reg. V. of 1830, s. 2. cl. 3.

The Sub Collector.—His functions and duties are the same as those of the Collector, and he is to be governed by the same rules in the districts placed under his charge.

Reg. XVI. of 1827, s. 5.

Assistant Collector.—He is to perform such duties as the Collector may assign to him, and to use his seal; and under this rule he tries suits referred to him by the Collector. There appears to be no limit as to amount.

Act No. XXII. of 1852, s. 3.

The Deputy Collector.—He is to discharge such of the duties and exercise such of the powers of the Covenanted Assistants as shall be prescribed from time to time in each case by the Governor in Council.

Reg. VI. of 1830, s. 1.

The Komavisdar, or Mamlutdar.—The Collectors and Sub-Collectors are authorized to refer to the several Komavisdars of their districts, or other equal and similar officer, suits under Chapter VIII. of Regulation XVII. of 1827, when the value of the matter at issue does not exceed 500 rupees.

Reg. XXIX. of 1827, s. 3.

The Agent for Sirdars in the Dekkan.—Certain Sirdars, or persons of rank in the Zillahs of Poonah and Ahmednuggur, are exempted from the jurisdiction of the Civil Courts. A list of these persons is furnished to the Judge of the Zillah, and comprises three classes, with regard to whom different modes of procedure are adopted An agent of Government is specially appointed for trying and deciding all complaints of a civil nature which would, under the ordinary rules, be cognizable by either of the Judges of Poonah and Ahmednuggur against any of those persons.

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ASSISTANT AGENT.—The Governor in Council may appoint the Assistant Judge of Poonah to be his Assistant to the Agent for Sirdars in the Dekkan, and the Agent may refer to his Assistant original suits against the Sirdars for amounts not exceeding 5,000 rupees. Act XIX. of 1835.

POLITICAL AGENT OF THE SOUTHERN MAHRATTAH COUNTRY.—The Sirdars in the Zillah of Dharwar are exempted from the jurisdiction of the Civil Courts, and subjected to the jurisdiction of this Agent; by whom all suits against them are tried in the same manner, and under the same rules, as are enacted for the Agent of Sirdars claims for the Dekkan. Reg. VII. of 1830, s. 3.

JAGEERDARS, SURINJAMDARS, and ENAMDARS.—The Governor in Council is empowered to grant sunnuds to persons of this description whose names are enumerated in a list furnished by Government, conferring on them authority to try and determine all original suits, of whatever amount that may be, either filed in their Court, or referred to them by the agent or judge within the territory defined in their sunnuds. Such sunnuds are to be granted only for life, and may be withdrawn by Government at pleasure. Without such sunnud no Jageerdar, Surinjamdar, or Enamdar has authority to hear and decide civil actions, unless on arbitration or by consent of the parties. Reg. XIII. of 1830, s. 2.

The same powers may be conferred by the Governor in Council on the agents of foreign sovereigns having lands in the territory of the Bombay Presidency, or on guardians, or such other persons as he may consider it expedient to invest with these powers. Act XV. of 1840.

APPELLATE JURISDICTION.

From original decisions of the Principal Sudder Ameen, Sudder Ameen and Moonsiff, there is an appeal to the Zillah Judge. Such appeals, when the amount does not exceed 5,000 rupees, may be referred for trial to a Senior Assistant Judge, stationed elsewhere than at the Sudder station. Reg. VII. of 1831, s. 2.

When the state of judicial business requires it, the same jurisdiction to try such appeals may be extended to the Senior Assistant at the Sudder station, by order of the Governor in Council, communicated through the Sudder Dewanny Adawlut. Reg. I. of 1830, s. 4. cl. 1. Ibid. cl. 2.

Appeals from decisions of Sudder Ameens and Moonsiffs, if not exceeding 100 rupees, may be referred by the Judge to the Principal Sudder Ameen. Reg. XVIII. of 1831, s. 3.

From original decisions of an Assistant Judge there is an appeal to the Judge. Reg. VII. of 1831, s. 4.

From decisions in appeal by the Principal Sudder Ameen there is a further appeal to the Judge, who may refer them to a Senior Assistant Judge. Reg. I. of 1832, s. 3.

The decisions of Senior Assistant Judges in appeals from the decisions of Principal Sudder Ameens, Sudder Ameens, and Moonsiffs are subject to a further appeal, according to the following rules.

When the decision is that of a Senior Assistant Judge of the Sudder station, and it is in confirmation of the decision of the lower court, there is an appeal in all cases to the Zillah Judge, if the matter at issue do not exceed 2,000 rupees, and to the Sudder Dewanny Adawlut if it exceed that sum. When the decision alters or reverses that of the lower court, there is in like manner an appeal which lies to the Zillah Judge, if the matter in issue do not exceed 1,000 rupees, and to the Sudder Dewanny Adawlut if it exceed that sum. Reg. VII. of 1831, s. 3.

When the decision is that of a Senior Assistant Judge at a detached station, and it is in confirmation of the decision of the lower court, it is final, if the matter in issue do not exceed in value 1,000 rupees; and when it alters or reverses the decision of the lower court, the decision of the Assistant Judge is final, if the matter at issue does not exceed 500 rupees. Though the decision be final in these cases, it is still subject to a special appeal to the Sudder Dewanny Adawlut. When the matter at issue in an appeal is above the amount of the Assistant Judge's final jurisdiction, it may be re-appealed to the Zillah Judge, if it do not exceed 5,000 rupees; if it be above that sum the appeal will be to the Sudder Dewanny Adawlut. Ibid.

From all decisions and orders of the Zillah Judge there is an appeal to the Sudder Dewanny Adawlut. Reg. II. of 1827, s. 5. Reg. IV. of 1827, s. 72. cl. 4.

From the decisions of Assistant Collectors, Komavisdars, or other similar officers, there is an appeal to the Collector or Sub-Collector. Reg. VI. of 1830, s. 5. cl. 1.

From the decisions of the Collector or Sub-Collector, there is an appeal to the Sudder Dewanny Adawlut, when, if the decree of the Assistant Collector, Komavisdar, or other similar officer was confirmed, the sum adjudged, or at issue, amounted to or exceeded 1,000 rupees; or if modified, or reversed, the sum disallowed or at issue amounted or exceeded 200 rupees.* Ibid. cl. 2.

From decisions of the agent of the Sirdars and the political agent in Dharwar, there is an appeal, when the decision is against Sirdars of the two first classes, to the Governor in Council; when the decision is against a Sirdar of the third class, the appeal is to the Sudder Dewanny Adawlut. Reg. XXIX. of 1827, s. 5.

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* No provision seems to be made for appeals from original decisions of the Collector; but as all appeals from such decisions which were pending before the Judge at the time that Reg. VI., of 1830 was passed were directed by sect. 6. of that Regulation to be transferred to the Sudder Dewanny Adawlut, it may perhaps be inferred that the appeal from the original decisions of the Collector, which formerly lay to the Judge, will now lie to the Sudder Dewanny Adawlut.

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From the decisions of Jageerdars, Surinjamdars, and Enamdars enumerated in the Government list, there is no appeal.

Reg. XIII. of 1830, s. 1. cl. 1.

From the decisions of all others than those enumerated in the list there is an appeal which lies to the agent of the Sirdars, if the Jageerdars are in the first and second class of Sirdars of the list provided for by Clause 2., Section 3., Regulation XXIX. of 1827; if they are in the third class of the said list, the appeal from their decision is to the Zillah Judge.

Act XVI. of 1853, s. 4. Reg. VII. of 1831, s. 3. cl. 3.

There is a special appeal to the Sudder Dewanny Adawlut from all decisions passed in regular appeals in any of the Civil Courts subordinate to it, on the grounds detailed in the outlines for Bengal and Madras. There is also a special appeal to the Zillah Judge from the decisions of an Assistant Judge at a detached station.*

LANGUAGE.

Act XII. of 1843, s. 3. Reg. III. of 1827, s. 10. Ibid. s. 11.

The regulations are silent as to the language of pleadings. The language of decrees, in so far as relates to the points to be decided, is the same as in the other Presidencies, as detailed in the outline for Madras. In other respects all processes, orders, sentences and decrees of any Zillah or inferior court, are in the language and character used in the court. The ordinary process of the Sudder Dewanny Adawlut is in the language and character used in the suit or proceeding to which such process relates; but the whole of the decree is in English, with a translation in the language used in the suit.

SUBJECTS OF SUIT.

Commons Report, 749.

The returns for the Bombay Presidency do not show the character of the litigation, except in so far as that may be gathered from the amount or value of the matters in dispute; and the abstracts relating to Civil Justice which were submitted to the Committee of the House of Commons in 1852 are for the year 1849, instead of the year 1850. During the former year, out of 95,286 suits disposed of, 88,983 were under 100 rupees; and of these 82,292 were under 50 rupees, and 38,068 under 10 rupees. From the abstracts of 1850, since received at the India House, it appears that the number of suits disposed of in that year were 95,054; of which 91,975 were connected with debt, wages, &c., 2,011 connected with land, 952 with caste, religion, &c., and 116 with land-rent.

PROCEDURE.

Reg. XVII. of 1827, s. 32 and s. 42.

The rules of procedure are applicable to the proceedings before the Collectors and their subordinates, when exercising judicial powers, as well as to proceedings before the ordinary judges: but the proceedings before the other officers exercising special judicial powers seem to be of a less formal character.

Reg. XVIII. of 1827, Appendix C.

In original suits, where the amount or value in dispute is under 100 rupees, there is no stamp; but in appeals, regular and special, there is a stamp on any amount or value above one rupee, which varies from two anas where the amount or value is no more than two rupees, to seven rupees where it is 100 rupees; above 100 rupees, original suits and appeals, regular or special, require institution stamps of the same amount; and where the amount or value is 300 rupees, the stamp is twenty rupees; from that to 6,000 rupees, it is fifty rupees, being somewhat higher than in the other Presidencies; and on 50,000 it is 1,000 rupees, being still higher; while above 100,000 it is the same, or 2,000 rupees. On the subsequent pleadings and applications to the Courts, the stamps also vary according to the amount or value of the matter at issue, but can never exceed four rupees.

Reg. VI. of 1828, s. 1.

Suits cognizable before the Collector are subject to the same same rules in regard to stamps as are in force for the Courts of Civil Judicature.

Reg. IV. of 1828, s. 1. Reg. VII. of 1830, s. 2.

Suits in the Dekkan generally, and also in the Zillah of Dharwar, are brought under the operation of the stamp laws; and there does not appear to be any exception of suits brought before the agent for Sirdars or the Jageerdars, Surinjamdars, and Enamdars.

PLEADINGS.

Reg. IV. of 1827, s. 14. Ibid. s. 23.

These are limited to the plaint and answer; but with the leave of Court, to be applied for verbally, a reply may be filed, and in the same way a rejoinder. The points to be established by the parties are to be defined, ascertained, and recorded; and evidence received in the same way as in the other Presidencies.

HEARING OF THE CAUSE.

Ibid. s. 24.

The judge determines both fact and law; and every Court where an European authority presides is allowed to avail itself of the assistance of respectable natives in any of the

* In the case of Bae Gunga, Appellant, v. Gukharam Christnajee and others, Respondent. (Bombay Sudder Dewanny Adawlut Reports of Selected Cases, p. 225), there were decisions of five separate tribunals before it was finally disposed of. The suit was for restitution of conjugal rights and thirty rupees damages, and was first decided by the Sudder Ameen of Surat in favour of the plaintiff. The decree was amended, on appeal, by the Principal Sudder Ameen. The case was again appealed, and the decrees of the lower court amended by the Assistant Judge. The defendants then appealed to the Zillah Judge, who agreed with the Sudder Ameen; and a special appeal was admitted by the Sudder Dewanny Adawlut, which by a majority of judges confirmed the judgment of the Assistant Judge, with a slight modification.

three ways mentioned in the outline for Bengal; and the decision is vested exclusively in the authority presiding in the Court.

The laws to be observed in the trial of suits are Acts of Parliament and regulations of Government applicable to the case. In the absence of such Acts and regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity, and good conscience. Reg. IV. of 1827, s. 26.

When, in any matter depending on the peculiarities of Hindoo or Mahomedan law, a doubt arises regarding such case, the Court, in aid of its judgment, is to consult the officer or officers appointed to expound these laws. The returns of cases decided by the different Courts do not afford the means of distinguishing the number of suits that may have been decided according to Acts of Parliament and regulations of Government, or by Hindoo or Mahomedan law, or according to justice, equity, and good conscience. Ibid. s. 27. Ibid.

EXECUTION OF DECREE.

The application for enforcing the decree of a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, must be addressed to the Zillah Judge, who may either decide on it himself or delegate authority for that purpose to an Assistant Judge. There does not seem to be any special rule for the execution of the decrees of Assistant Judges; and the application must apparently be made to the Zillah Judge in that case also, as well as when the final decree is his own. Reg. IV. of 1827, s. 61. cl. 2.

The decrees of the Sudder Dewanny Adawlut are executed by the Judge of the Zillah in which the suit was originally tried, in the same manner as decrees of his own Court. Ibid. s. 95. cl. 3.

No decree against a Sirdar of the first class can be carried into execution without the sanction of the Governor in Council. Reg. XXIX. of 1827, s. 5. cl. 1.

The Collector executes his own decrees on verbal application by the party interested. Reg. XVII. of 1827, s. 33.

Jageerdars have also authority to execute their own decrees, and applications for execution of decrees refused by them may be received by the agent or Judge, and such order passed thereon as justice and the regulations may require. Reg. XIII. of 18[illegible], s. 4.

REVISION OF JUDGMENT.

All Courts, original and appellate, receive applications for revisions of judgment. The grounds for the application are error or omission apparent on the face of the decree, or the discovery of new matter or evidence which could not be adduced at the time when the decree was passed. The order of the Court rejecting the application is final, as in the other Presidencies. If, on the other hand, the Court should think the grounds adequate, the application, if made to a subordinate Court, is to be referred, with the sentiments of th Court, to the Zillah Judge; and if made to the Zillah Judge, it is to be referred, in like manner, to the Sudder Dewanny Adawlut, for final decision by these authorities respectively. If an application be made to the last-mentioned Court for a revision of its own judgment, it is finally decided upon in all cases by that Court. Reg. IV. of 1827, s. 71. Ibid. s. 96.

APPEAL.

The petition of appeal is to be presented to the Appellate Court, that is, to the Collector or Sub-Collector when the appeal is from the decree of an Assistant Collector, Komavisdar, or other similar officer; to the Agent of Sirdars and the Political Agent when the appeal is from decrees of the Sirdars; to the Zillah Judge when the appeal is from the decree of any of the subordinate courts; and to the Sudder Dewanny Adawlut when the appeal is from a decree of the Judge. If the appeal be to the Judge, the petition is to be presented within thirty days; and the rule is apparently the same for appeals to the other authorities above mentioned, except the Sudder Dewanny Adawlut. When the appeal is to that Court, the petition is to be presented within ninety days from the date of the decree. The appellant, along with his petition, is to deliver good and sufficient security for payment of the costs that may be awarded on the appeal to the respondent, except in cases of appeal which are carried on under the authority and at the expense of Government. In other cases no petition of appeal can be admitted without such security, or proof that the appellant is a pauper. Reg. IV. of 1827, s. 73. Ibid. s. 75. Act VIII. of 1845. Reg. IV. of 1827, s. 75.

JUDGMENT.

All that requires special notice has been already mentioned under the head of Language.

SUSPENSION OF EXECUTION.

When an appeal has been admitted, no order for enforcing the decree shall be issued during the appeal; and if an order for enforcing the decree has been issued, the execution of the order, so far as it may be unexecuted, shall be suspended pending the appeal. But the Judge, if applied to by the respondent, shall require the appellant, if in possession, to give good and sufficient security for one year's produce of the land, or other immoveable property, or, with respect to other property, for the performance of the decree which may be passed upon the appeal. If the appellant fail to give such security, the decree may be enforced as in ordinary cases. Reg. IV. of 1827 s. 81. cl. 1. Ibid. cl. 2. Ibid. s. 82.

Appendix B. No. 7.

Practice of the Sudder Dewanny Adawlut in Appeals.

Reg. IV. of 1827, s. 85.

After the petition of appeal, a second petition may be filed by the appellant offering specific objections to the judgment. The further pleadings are to be conducted generally according to the rules prescribed for original suits.

Ibid. s. 86. Reg. II. of 1827, s. 10. cl. 1. Ibid. cl. 2.

All appeals are to be referred in the first instance to one Judge, who shall pass judgment thereon, provided such judgment confirm the decree appealed from. But if the Judge is not prepared to confirm the decree, he shall record his opinion that a full court is required, and the suit shall thereafter be tried by a court consisting of any three or more Judges.

General Business of the Sudder Dewanny Adawlut.

Commons Report for 1852, p. 746.

The number of appeals disposed of in the year 1849 was 110, of which six were dismissed for default, fifty-four confirmed, and fifty reversed. There were besides 785 petitions for the admission of special appeals, of which 181 were admitted, 160 dismissed on default, and 444 rejected.

Appeals to the Privy Council.

Reg. IV. of 1827, s. 100. Act. II. of 1844.

The rules for the admission of appeals from the Sudder Dewanny Adawlut at Bombay, and in regard to the execution of decree, security, and expense of translations, are substantially the same as at the other Presidencies. The Bombay Regulations on the subject are noted on the margin.

Appendix B. No. 8.

APPENDIX B.—No. 8.

Outline of the Constitution and Procedure of the East India Company's Courts of Criminal Judicature in the Presidency of Bombay.*

JUDGES AND JURISDICTIONS.

I. The Sudder Foujdary Adawlut.

Reg. XIII. of 1827, s. 2. Reg. III. of 1830, s. 9. Reg. VIII. of 1833, s. 3.

This Court is composed of the same Judges as the Sudder Dewanny Adawlut, and has supreme criminal jurisdiction over the territories subject to the Presidency of Bombay. The whole of the territories are visited annually by the Judges; the circuits being divided into three parts, to each of which one of the Judges is appointed as Judicial Commissioner by the Governor in Council.

Reg. III. of 1830, s. 10.

As Judicial Commissioners, the Judges of the Sudder Foujdary Adawlut hold all trials of a peculiar or aggravated nature, which Government may wish to be reserved for that purpose. They are also vested with full powers of control, inquiry, and general supervision over the judicial administration of the Zillahs comprised in their tour. They have likewise concurrent jurisdiction with the Session Judges for the trial of all serious crimes and offences; but their jurisdiction, which, under the original constitution of the Court, was exclusive, is now rarely exercised, except in the special cases above referred to.

II. The Session Judge.

Reg. III. of 1830, s. 2. Reg. XIII. of 1827, s. 12. Reg. III. of 1830, s. 5. Reg. XXX. of 1827, s. 5.

The Civil Judge of the Zillah is also the Session Judge. His criminal jurisdiction was originally limited to the trial of the less heinous crimes and offences, and he was then denominated the Criminal Judge of the Zillah. His functions and jurisdiction are now those of the Court of Circuit and Criminal Judge, and he has authority to try all crimes and offences committed within his jurisdiction, and to adjudge punishment to the full extent authorized by the Regulations for each offence. The Session Judge is to hold half-yearly Sessions at the detached stations where his Assistants may be fixed. When not occupied in the half-yearly Sessions, he sits constantly at the Sudder station for the trial of offenders.

III. The Assistant Session Judge.

Reg. III. of 1830, s. 6.

The Assistants to the Zillah Judge are Assistant Session Judges.

Reg. XIII. of 1827, s. 12, cl. 3. Ibid. s. 13, cl. 3. Ibid. s. 13, cl. 1.

The Session Judge is authorized to delegate to an Assistant Session Judge the trial of offences, and also the adjudging of punishment within the following limits, viz.: ordinary imprisonment, with hard labour, for a period not exceeding two years; flogging (for theft only) to the extent of thirty stripes; fine, to be limited by the period of imprisonment assigned in commutation, not exceeding two years; personal restraint. All which punishments may be inflicted singly or combined. These powers may be enlarged by the Governor in Council to any extent not exceeding the authority of the Session Judge in his capacity of Criminal Judge. The punishments which the Session Judge was authorized to inflict in that capacity are as follow, viz.: solitary imprisonment, for a period not exceeding six months; ordinary imprisonment, with hard labour, for a period of seven years; flogging, to the extent of fifty stripes; fine, and personal restraint. All which punishments

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* The points in which the system of Bombay differs from the systems of Bengal and Madras are only noticed in this outline.

may be awarded either singly or combined, except that whatever period of imprisonment may be assigned in commutation for fine, is to be included in the limitation of seven years.

The Session Judge has authority to take into his own hands the trial of cases which may have been delegated to his Assistants, to review their proceedings, and to mitigate or annul, but not to enhance, their sentence. He is also empowered to employ his Assistants in the preparation of cases for trial by himself. Reg. XIII. of 1827 s. 12, cl. 4.

The delegated jurisdiction which may be conferred by the Session Judge on his Assistants is restricted to the Assistant Session Judge who is stationed at a Zillah Sudder station. When an Assistant Judge is authorized to hold his Court elsewhere than at the Sudder station, the Government may authorize him to perform all or any part of the duties that may be confided to an Assistant Session Judge, under the regulations in force within the limits of his jurisdiction; and it may further invest him with all or any part of the authority of a Criminal Judge in preparing cases for trial at the Sessions. Reg. XI. of 1828.

THE MAGISTRATE.

The duties of the Magistracy, both judicial and police, are combined with the collection of the revenue.

The collector of each Zillah is the Magistrate, and performs the functions of police. All ministerial officers in the collector's and village establishments may be employed in executing any police process or measures. Reg. XII. of 1827, s. 3, cl. 1. Ibid. cl. 3.

The sub-collector is the joint-magistrate. Reg. VIII. of 1831, s. 1.

The assistants to the collector act in their respective ranks as assistants to the Zillah Magistrate, and use his seal. Reg. XII. of 1827, s. 3, cl. 3.

The native collectors, or Komavisdars and Mamlutdars, are the district police officers, and have charge of the police of their respective districts. Ibid. s. 5.

The chief manager of the revenue of a village, or Patel, is the village police officer, and has charge of its police. Ibid. s. 6.

JUDICIAL POWERS OF THE MAGISTRATE.

The Magistrate is authorized to try for all offences, except those of a political nature, which it is his duty to report for the instructions of the Governor in Council; but his power of punishment is limited to the following sentences, which are the utmost that he is authorized to pronounce, viz.: fine; ordinary imprisonment with hard labour to one year; flogging, not exceeding thirty stripes, and personal restraint (any of which may be combined): solitary imprisonment for a period not exceeding one month, in cases to which that mode of punishment applies by Regulation. Reg. XII. of 1827, s. 12. Reg. IV. of 1830, s. 3. Reg. XII. of 1827, s. 13. Reg. VIII. of 1831, s. 2.

JUDICIAL POWERS OF THE JOINT MAGISTRATE.

He is vested with the same powers and penal jurisdiction as the magistrate. Reg. V. of 1830, s. 2, cl. 4.

JUDICIAL POWERS OF THE ASSISTANT MAGISTRATE.

He may be deputed by the magistrate to perform any part of his duties, and may pass sentences to similar extent; but the magistrate has full power to mitigate or annul sentences passed by his assistants, and to recall at any stage of proceeding matters referred to them. All sentences for imprisonment above three months passed by assistants must be referred to the magistrate for confirmation. Reg. XII. of 1827, s. 3, cl. 3. Reg. IV. of 1830, s. 3.

JUDICIAL POWERS OF THE DISTRICT POLICE OFFICER.

He has authority to punish trivial cases of theft, abuse, assaults, or resistance to public officers in the discharge of their duty, provided information be laid within one month after the act was committed, by fine not exceeding fifteen rupees, confinement in any available place, not exceeding twenty days, or placing in the stocks, or other similar restraint, for a period not exceeding twelve hours. These powers may be extended in particular districts by the Governor in Council by proclamation; but the extended powers are not to exceed ordinary imprisonment without hard labour for a period of two months, fine of thirty rupees, twenty stripes, or personal restraint, or any of these combined. The offences for which these punishments may be inflicted are the same as the above mentioned, without the restriction as to the period at which the offence may have been committed applying to theft. Reg. XII. of 1827, s. 41. Reg. IV. of 1830, s. 5. Reg. XII. of 1827, s. 42. Ibid. cl. 2.

Mahalkarees,* or other officers, however designated, exercising their functions, may be invested by the Governor in Council with police powers within the towns and villages under their charge, to the same extent as are possessed by Komavisdars or Mamlutdars. Act XX. of 1835.

All sentences and acts of the district police are subject to be revised by the magistrate. Reg. XII. of 1827, s. 22.

JUDICIAL POWERS OF THE VILLAGE POLICE OFFICER.

The village police officer has authority to punish trivial cases of abuse or assault, provided the trial be held within eight days after the act was committed, by confinement in any suitable place for a period not exceeding twenty four hours. Ibid. s. 49.

* The head officer of a Mahal, or subdivision of a Talook.

Appendix B. No. 8.

All sentences and acts of the village police officer are subject to be revised by the magistrate.

Reg. XII. of 1827, s. 22.

Judicial Powers of Landowners.

Reg. XV. of 1827, s. 1 & 2.

In districts where such a measure may appear expedient, the Governor in Council may cause landowners to be placed in charge of the police, within their respective lands, or other convenient limits. In such cases a sunnud is to be issued to the landowner, specifying the territorial bounds of his jurisdiction, and containing as precise a specification as possible of the offences which he is empowered to try, as also the extent of punishment which he may adjudge, but which cannot be extended beyond certain offences and punishments particularized and specified in the Regulation; and no offence can be punished by a landholder which has been committed three months before the complaint was made. Sentences awarded as authorized by the Regulation above referred to shall be carried into effect immediately; but if the magistrate see sufficient cause, he may mitigate or annul them, or remove the investigation of any case under progress to himself or to any of his assistants.

Ibid. s. 8.
Reg. IX. of 1831.

Exception to Jurisdiction.

Reg. XI. of 1827 s. 1.

The exception as to British-born subjects is the same as stated in the outlines for Bengal and Madras; but other Europeans and Americans are not included in the exception, nor otherwise exempted from the jurisdiction of any judicial officer, and are therefore subject to the district and village police officers and landholders, in regard to the petty offences that come within their jurisdiction, in the same way as the natives of the country.

There are some special enactments which impose fines, and, in some instances, imprisonment, for particular offences, and all persons are made amenable in regard to such offences to the justices of the peace and other magistrates. Act XVII. of 1837, which relates to the Post Office, Act XXXI. of 1838, in regard to growing trees or plants, and Act V. of 1844, "for the suppression of lotteries," are of this description; and in these there is no exception of British subjects. These Acts are applicable generally to all the Presidencies. By Act XIX. of 1850, "concerning the binding of apprentices," which is also of the same general application, it is declared that all British subjects, wherever or of whatever parents born, shall be amenable for the purposes of the Act to the jurisdiction of the courts and magistrates of the East India Company.

Procedure.

Reg. XII. of 1827. s. 50.

When a penal act is committed within the limits of a village more serious than those which the village police officer is authorized to punish, he is to apprehend the offender, and forward him to the district police officer, with all persons capable of giving evidence respecting the same.

Ibid s. 43.

The district police officer is to forward, in custody, to the magistrate, any person whom he may have reasonable cause to suppose to have been guilty of any penal offence of a nature more serious than those which he is empowered to try; but after securing the suspected persons, he is to investigate the matter, and if the result confirm that there is occasion to bring the party to trial, the proceedings are to be forwarded with him to the magistrate. The witnesses are also to be forwarded, or their attendance before the magistrate secured by recognizance, and articles stolen or required in evidence are also to be secured and forwarded to the magistrate.

Reg. XII. of 1827, s. 12.

When a person charged with an offence is brought before a magistrate, he is to proceed to trial of the same; but if it appear that the punishment which he is authorized to inflict is not adequate to the offence, he is to forward the prisoner to the Session Judge of the Zillah, or to the Assistant Session Judge at a detached station, if a detached Assistant Session Judge be stationed within his collectorate, with a copy of the proceedings, and all the original written exhibits and articles which may have been produced before the magistrate as evidence.

Reg. XII. of 1827, s. 13, cl. 3.

The Governor in Council may confer on any zillah magistrate authority to commit offenders to be tried before the Session Judge; and the authority of commitment may be delegated by the magistrate to any of his assistants. When a commitment is thus made by a magistrate or his assistant, he is to transmit the prisoner to the Session Judge, or to the Assistant Session Judge at a detached station, as the case may be; and to take the proper measures for securing the attendance of witnesses and parties.

Trials before the Magistrate.

Reg. XII. of 1827, s. 14.

Trials before the Magistrate are to be conducted according to the rules prescribed for Criminal Courts in general.

Trials before the Criminal Courts.

Reg. XIII. of 1827, s. 38, cl. 5.
Reg. VIII. of 1831, s. 8.

These are conducted generally in the same way as in Bengal; but a prisoner's confession made before the Court in which he is tried is sufficient proof for conviction, provided that on hearing the evidence read over to him he confirm the confession. And though the native law officers are in attendance, it is only for the purpose of assisting the Court if it

should desire to consult them. Any Court in which an European presides may avail itself of the assistance of respectable natives as a punchayet, assessors, or jury; but the decision in all cases is vested exclusively in the authority presiding in the Court. APPENDIX B. No. 8.

THE LAW.

The Criminal Law of the Bombay Presidency is contained in Regulation XIV. of 1827 and four supplements, which are Regulations XVII. of 1828, III. of 1829, XVI. of 1830, and V. of 1831.

EXECUTION OF SENTENCE.

When the sentence is for death, transportation, or imprisonment for life, it cannot be carried into execution until confirmed by the Court of Sudder Foujdary Adawlut; and if the sentence be that of an Assistant Session Judge, and it is for imprisonment for any period exceeding two years, it must also be referred to that Court. Reg. XIII. of 1827, s. 21, cl. 3. Ibid. s. 13, cl. 2.

APPEALS.

There is no express provision for appeal in criminal cases; but as the magistrate has authority to mitigate or annul the sentences of his subordinates, he receives in practice appeals from their decisions. In like manner appeals are received by the Session Judge from sentences passed by the Assistant Session Judge; and by the Sudder Foujdary Adawlut from sentences of the Session Judge, and of the magistrate. In the absence of the Judicial Commissioners, that is, in the intervals of their visits, the Session Judge has power to call for the records of the zillah magistrate for special reason, and to make such amendment thereon as may appear necessary; but if the magistrate disapprove of the amendment, the records, accompanied with the correspondence between him and the Session Judge, are to be sent by the latter to the Sudder Foujdary Adawlut. Reg. VIII. of 1831, s. 3, cl. 3.

REVISION OF PROCEEDINGS OF LOWER COURTS BY THE SUDDER FOUJDARY ADAWLUT.

Reports relating to the business in the departments of the Session Judge and zillah magistrate are transmitted periodically to the Sudder Foujdary Adawlut, and the magistrate is to hold them in readiness for the inspection of the Session Judge whenever he may desire it. But the Court's powers of revision are exercised chiefly through its Judicial Commissioners, by whom the whole territory is visited once every year. Reg. XIII. of 1827, s. 14, cl. 4, and s. 19, cl. 3.

Appendix C.

APPENDIX C.

MINUTES OF DIVISIONS OF THE COMMISSIONERS.

At a Meeting of the Commission, held on Tuesday, 21st February 1854,

PRESENT:

The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Ellis.
Mr. Lowe.
Mr. Hawkins.

It was moved and resolved,—

That the person applying for a summons to a defendant in a civil suit shall state at the time of his application whether he requires a summons for the first hearing and settlement of issues, or for the final disposal of the cause.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls. The Lord Chief Justice of the Common Pleas. Sir Edward Ryan. Mr. Cameron. Mr. Macleod. Mr. Hawkins. Mr. Lowe.	Mr. Ellis.

At a meeting of the Commission, held on Tuesday, 11th April 1854,

PRESENT:

The Master of the Rolls.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Lowe.
Mr. Millett.

It was moved by Mr. Cameron,—

That in all cases, tried in Calcutta or the Mofussil, in which an issue of fact shall have been framed by the Court, and a future day appointed for the trial thereof, a jury of three shall be summoned.

For the Motion.	*Against the Motion.*
Mr. Cameron.	The Master of the Rolls. Sir Edward Ryan. Mr. Macleod. Mr. Lowe. Mr. Millett.

The motion was accordingly lost.

At a meeting of the Commission, held on Tuesday, 9th May 1854,

PRESENT:

The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Ellis.
Mr. Lowe.
Mr. Millett.

APPENDIX C.

It was moved and resolved,—

That the trial of all offences at the Presidency, except offences punishable upon summary conviction, shall be by jury.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls. The Lord Chief Justice of the Common Pleas. Sir Edward Ryan. Mr. Macleod. Mr. Ellis. Mr. Lowe. Mr. Millett.	Mr. Cameron.

It was further moved and resolved,—

That the above provisions may be extended by the Governor General in Council to such places beyond the limits of the Presidency towns as he may see fit.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls. The Lord Chief Justice of the Common Pleas. Sir Edward Ryan. Mr. Macleod. Mr. Ellis. Mr. Lowe. Mr. Millett.	Mr. Cameron.

It was further moved and resolved,—

That criminal trials before the Session Judge, in which a British subject, or an European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor General in Council may think fit to extend this rule, registered according to such rules as the Governor General in Council shall prescribe, is a defendant, or one of the defendants, shall be by jury, of which at least one half shall consist, if such defendant desire it, of persons so registered.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls. The Lord Chief Justice of the Common Pleas. Sir Edward Ryan. Mr. Macleod. Mr. Ellis. Mr. Lowe. Mr. Millett.	Mr. Cameron.

It was further moved and resolved,—

That criminal trials before the Session Judge, in which registered and non-registered persons are joined as defendants, shall be by jury, and such joinder shall not be a ground of severance at such trial.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls. The Lord Chief Justice of the Common Pleas. Sir Edward Ryan. Mr. Macleod. Mr. Ellis. Mr. Lowe. Mr. Millett.	Mr. Cameron.

APPENDIX C.

It was further moved and resolved,—

That in such cases if the non-registered defendant desire it, at least one half of the jury shall consist of non-registered persons; and if the registered defendant also desire to be tried by a jury of which one half are registered persons, then the jury shall be composed of an even number, of which one half shall be registered and the remaining half non-registered persons.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls.	Mr. Cameron.
The Lord Chief Justice of the Common Pleas.	
Sir Edward Ryan.	
Mr. Macleod.	
Mr. Ellis.	
Mr. Lowe.	
Mr. Millett.	

At a meeting of the Commissioners, held on Thursday, 13th July 1854,

PRESENT:

The Master of the Rolls.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Lowe.

The question having been submitted whether the High Court *as such*, shall, by means of its Judges, exercise original civil and criminal jurisdiction in Calcutta, or whether separate Courts shall be established, of which the Judges of the High Court shall also be Judges, it was resolved that the High Court, *as such*, shall exercise the said jurisdiction.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls.	Mr. Cameron.
Sir Edward Ryan.	
Mr. Macleod.	
Mr. Lowe.	

At a meeting of the Commission, held on Monday, 30th October 1854,

PRESENT:

The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Ellis.
Mr. Lowe.

It was moved and resolved,—

The Judges of the High Court shall hold their offices during the pleasure of the Crown. It shall, however, be competent to the Governor General in Council, to direct the suspension of any Judge of the High Court, until the pleasure of the Crown be known.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls.	Mr. Macleod.
The Lord Chief Justice of the Common Pleas.	
Sir Edward Ryan.	
Mr. Cameron.	
Mr. Ellis.	
Mr. Lowe	

At a Meeting of the Commission, held on Tuesday, 31st October 1854,

PRESENT:

The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Ellis.
Mr. Lowe.

It was moved,—

That in parts of the Mofussil and at seasons of the year in which the Judges of the High Court can conveniently travel, they may be sent on circuit by the Chief Justice with the approbation of Government.

That when the Judges of the High Court may be sent on circuit, they shall exercise original jurisdiction in cases which both parties desire to reserve for them, and in cases which the ordinary Judge of original jurisdiction has reserved for them, of his own accord, or on the application of either party made before the framing of the issues.

That the ordinary Judge of original jurisdiction shall record his reasons for reserving a case of his own accord, or for granting the application of one party to reserve a case.

That a Judge of the High Court on circuit may refuse to hear any case reserved for him, and direct the ordinary Judge of original jurisdiction to hear it.

For the Motion.	*Against the Motion.*
The Master of the Rolls.	The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.	Mr. Macleod.
Mr. Cameron.	Mr. Ellis.
	Mr. Lowe.

The motion was accordingly lost.

At Meetings of the Commission, held on Thursday, 15th June 1854, and 27th February 1855.

PRESENT:

The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Ellis.
Mr. Lowe.

It was moved and resolved,—

That when the magistrate has resolved to send the defendant before any Court for trial, he shall make a written instrument under his hand and seal, declaring with what offence the defendant is charged, and within the cognizance of what Court the offence is, and shall direct that the defendant be tried by the said Court on the said charge.

The charge shall describe the imputed offence as nearly as possible in the language of the clause of the Penal Code under which such offence is punishable, and shall refer to such clause by the number of the clause.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls.	Mr. Cameron.
The Lord Chief Justice of the Common Pleas. *	
Sir Edward Ryan.	
Mr. Macleod.	
Mr. Ellis.	
Mr. Lowe.	

APPENDIX C.

At a meeting of the Commission, held on 28th February 1855.

PRESENT :

Sir Edward Ryan.
Mr. Cameron.
Mr. Ellis.
Mr. Lowe.

It was moved and resolved,—

It shall be at the discretion of the magistrate to examine the defendant at any stage of the inquiry from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary until the inquiry is completed, and the defendant either discharged or committed, or held to bail, to take his trial before the High Court or the Court of Session, as the case may be.

If the defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

For the Resolution.	*Against the Resolution.*
Sir Edward Ryan.	Mr. Ellis.
Mr. Cameron.	
Mr. Lowe.	

At meetings of the Commission, held 15th May and 4th August 1855.

PRESENT :

The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Ellis.
Mr. Lowe.

It was moved and resolved,—

If a defendant claims to set off a demand against the claim of a plaintiff to an amount in excess of the ordinary jurisdiction of the moonsiff, the moonsiff shall, nevertheless, have authority to try the case, and shall give judgment for the recovery of any sum, which, upon inquiry, shall appear to be due to either party.

For the Resolution.	*Against the Resolution.*
The Master of the Rolls.	Mr. Cameron.
The Lord Chief Justice of the Common Pleas.	Mr. Macleod.
Sir Edward Ryan.	
Mr. Ellis.	
Mr. Lowe.	

At meetings of the Commission, held 18th May and 7th July 1855.

PRESENT :

The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Ellis.
Mr. Lowe.

It was moved and resolved,—

That where a person shall be convicted of any two offences which are punishable cumulatively, it shall be lawful for the Court to sentence him for each of the two offences to the penalties prescribed by the Penal Code in respect of each of the two offences, provided that the punishment inflicted for each of the two offences is within the ordinary penal jurisdiction of the Court; and it shall not be necessary for the Court, only by reason of the cumulative punishment being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

For the Resolution	*Against the Resolution.*
The Master of the Rolls.	Mr. Cameron.
The Lord Chief Justice of the Common Pleas.	Mr. Macleod.
Sir Edward Ryan.	Mr. Ellis.
Mr. Lowe.	

At a Meeting of the Commission, held 1st June 1855

PRESENT:

The Master of the Rolls.
The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.
Mr. Cameron.
Mr. Macleod.
Mr. Ellis.
Mr. Lowe.

It was moved, that—

The High Court shall consist of not less than eight Judges, of whom three shall be appointed by the Crown, and the remainder by the Governor General in Council; and one of such Judges shall be appointed Chief Justice by the Crown.

The Judges to be appointed by the Crown shall be selected from barristers of England and Ireland and from members of the Faculty of Advocates in Scotland, of not less than five years standing.

The Judges to be appointed by the Governor General in Council shall be selected from,—

1st. Members of the Covenanted Civil Service of ten years standing; or,

2d. Barristers of England and Ireland, and members of the Faculty of Advocates in Scotland, who shall have been admitted as barristers and advocates of the Supreme Court or of the High Court in India for a period of not less than five years; whether practising at the bar, or being officers of the Court, or holding office under the Government; or,

3d. Persons who have been in the uncovenanted Judicial Service of the Government for a period of ten years; or,

4th. Persons who have been vakeels for a period of ten years; or,

5th. Persons who shall have acted in the two last-mentioned capacities for periods amounting together to not less than ten years.

Provided that the majority of the Judges appointed by the Governor General in Council shall always be members of the Covenanted Civil Service.

For the Motion, but without the closing Proviso.	*Against the Motion.*
The Master of the Rolls.	The Lord Chief Justice of the Common Pleas.
Sir Edward Ryan.	Mr. Macleod.
Mr. Cameron.	Mr. Ellis.
Mr. Lowe.	

Also moved and resolved,—

That the words "Chief Justice," stand part of the rule in the following articles,—

The Chief Justice shall from time to time determine what and how many Judges of the Court, whether with or without the Chief Justice, shall constitute Courts of Appeal; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts of original jurisdiction.

The Chief Justice shall from time to time determine what and how many Judges, whether with or without the Chief Justice, shall from time to time constitute Courts of Appeal; and what Judges, whether with or without the Chief Justice, shall constitute Courts for the hearing of cases referred by the Session Judges; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts for the revision of cases called for by the High Court; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts of original criminal jurisdiction.

For the Resolution.	*Against the Resolution.*
The Lord Chief Justice of the Common Pleas.	The Master of the Rolls.
Sir Edward Ryan.	Mr. Macleod.
Mr. Cameron.	Mr. Ellis.
Mr. Lowe.	

APPENDIX D.
No. 1.

APPENDIX D.—No. 1.

MINUTE BY MR. MACLEOD.

Since the greatest part of the following paper was written the scheme of the majority for the High Court has been altered. But it appears to me that it has not been rendered materially less objectionable; and that what I had written, with an addition which I have made to it, will show my views on the question, though imperfectly and feebly, yet as well as any other statement of them which I could make within the same compass. In the form, therefore, which my remarks have thus assumed, I very humbly submit them.

Hitherto the superintendence of the administration of justice throughout the British Empire in India, with the exception of the three towns of Calcutta, Madras, and Bombay, and the small isolated settlements of Penang, Singapore, and Malacca, has, in as far as it is exercised in India itself and by judicial proceedings, been vested almost entirely in courts consisting of Judges who are required by law to be, and accordingly always have been, and now are, all of them, members of the Indian Civil Service. Those are the tribunals which we call the Sudder Courts. By the constitution proposed to be given to the new High Court,* which is to take the place of the Sudder Court at Calcutta, as well as of the co-ordinate tribunal of more limited jurisdiction called the Supreme Court, it is not provided that even a single seat on the bench shall be filled by a member of the Indian Civil Service. This is a great and, in my opinion, an impolitic innovation. The interests of India, I think, require that at least half the seats on the bench of the new Court shall be secured by law to the Civil Service.

By the scheme of the new Court, it is not proposed to secure by any provision of law any seats on its bench to English lawyers, any more than to civil servants. This I regard as another fault. I think that the judges to be appointed by the Crown ought to be required by law to have the same qualifications, which the existing law makes requisite for an appointment to a judgeship of the Supreme Court, namely the being a barrister of five years standing. It seems, however, in a high degree probable that, though the law may not be so framed as to require it, the legal profession will still hold all the judgeships in the patronage of the Crown. This indeed is avowedly intended and expected by us all. That profession, therefore, it is pretty certain, will not actually lose any judgeship by the change; while on the other hand it may, and in all probability will gain some of those judgeships, the patronage of which is vested in the local government.

Extract from Proceedings of the Commission, October 30, 1854.

* "Such Court shall consist of not less "than eight judges, of whom three shall "be appointed by the Crown, and the "remainder by the Governor General in "Council. The persons so to be ap-"pointed shall be selected from barristers "of England and Ireland of not less than "five years standing, or from persons in "the service of the Government, or of "the East India Company, whether "covenanted or not, of ten years stand-"ing, or from vakeels of ten years "standing, or from advocates who shall "have practised at the bar in the "Supreme or High Courts in India for "not less than ten years, or from persons "who shall have acted in more than one "of those capacities for periods amount-"ing together to not less than ten years; "and that one of such judges shall be "appointed Chief Justice by the Crown."

"Mr. Macleod dissentient."

By Sir Charles Wood's letter of the 30th November 1853, our attention was directed to the object of amalgamating the Supreme and Sudder Courts, a measure which he states to have been already announced to Parliament. I must own that it does not appear to me that the proposed new Court can quite correctly be said to be formed by amalgamating the two existing Courts. These are a Court of English lawyers and a Court of civil servants. In the proposed new Court, the former ingredient of the amalgam which was contemplated is practically preserved, not only without any real risk of diminution, but with a pretty sure prospect of increase. As to the other ingredient (if I may so term it), I do not indeed apprehend that it will be wholly thrown out for a good many years to come; and I consider as morally certain that it will not be so dealt with at first. From the first, however, it is avowedly intended that it shall be diminished by placing at least one person, neither barrister nor civil servant, on the bench. There will be no ground for reckoning any particular number of seats as sure to be always filled by civil servants. And though we may reasonably expect that for a considerable period of time to come there will still be civil servants on the bench, yet it seems likely that before long the English lawyers on it will not only outnumber the civil servants, but constitute a majority of the whole Court. To enact a law under the operation of which this might easily happen would I think be impolitic, even if it were a law not likely to do harm in any other way than by leading to that result. But the proposed provision of law now the subject of particular consideration, namely, the clause determining who shall be eligible to seats on the bench of the High Court, is likely to do infinite harm in other ways.

To make any approach to a just view of this grave matter, really a political question of the most extensive bearings, and of vital importance, it is necessary to consider what is the nature and condition of the British Empire in or rather over India. That empire is, and as long as it endures must continue to be, a domination of race over race, of a single European race over a number of Asiatic races. But it is nevertheless a blessing to the people of India. It is almost entirely free from the evils which in ordinary cases the political ascendancy of race over race infers. Under it India is governed wisely, strongly, justly, and mildly, to a degree far beyond what would otherwise be possible; and to the mass of the people of any country it matters little who are its rulers, or what is the form of its government, except in as far as whether it is governed with wisdom, power, justice, and mildness, may depend on those circumstances.

The men who govern India are not a portion of the people of India. This circumstance, which at first sight may seem calculated to aggravate the evils commonly attendant on the rule of race over race, really removes them by setting the rulers free from the partial interests and passions by which they would otherwise of necessity be swayed. At the same time, to the unspeakable advantage of India, her rulers are of a race conspicuously gifted by nature with the qualities which fit men for the conduct of public affairs, and of a nation which is in the foremost rank of the most highly civilized and most enlightened nations upon earth. They are men, too, from the Governor General down to the youngest member of the Civil Service, sent from that so far advanced nation for the express purpose of conducting the government of India. This circumstance is of immense importance.

No rulers, however, could ever be safely vested with absolute and irresponsible power: there can be no good government unless the men who conduct public affairs are subject to some effective control. Inferior functionaries are of course everywhere controlled by their superiors; but the highest authorities, governments themselves, require control. In England this control is exercised over the government of the country by its Parliament and by public opinion. In India the necessary control over the local government neither is nor can be supplied in the same way. But the British Government in India has it in a different way. It is controlled ordinarily and continuously by special superintending authorities in England, and occasionally by the Parliament, and even by the public of this country.

The voice of the press in India, and of what is called the public there, is only the voice of Europeans, of descendants of Europeans for the most part of mixed blood, and of half-Anglified Hindoos, who imitate Englishmen, generally with indifferent success, and especially affect English ways of thinking and talking; who are in number as nothing in comparison with the population; and who, though deserving of a full share of reasonable consideration on our part, are not, it is well known, held in much esteem by any considerable portion of the people of India. That voice, however, such as it is, has some force, and is capable of working for good or for evil. It has done both; but I believe that on a fair balance its operation would be found to have been on the whole rather beneficial than hurtful. It is a power which a wise statesman, I think, would not crush. Yet he certainly would feel it his duty to watch it, and to take care that it did not overstep its proper bounds, within which it may be useful, and beyond them can only be mischievous and dangerous. Those limits I believe to be narrow. The interests of the public in India, as understood by themselves, and the feelings and aspirations of that public, are far from being coincident or even much in accordance with the interests and wishes of the people. A representative government in India, representative as it necessarily must be of the kind of public which exists there, not of the people, would be a tyranny. If the public had in any way a complete control over the government, and it were possible that the government should still maintain itself, India would be subjected to an iron rule, of the nature of an unmitigated domination of race over race: and it is impossible that the government should become practically responsible to the Indian public in any considerable degree without becoming proportionally tyrannical and oppressive. As the only possible good government for India is a British government so the only possible salutary control over that government is control from England.

I return to the proposed scheme for a new High Court. That scheme holds out judgeships in the gift of Indian Governors to the ambitious hopes not only of barristers, but of other and far more extensive classes of men. Among the men, however, who are included within the terms of the clause, when I consider who, not being English barristers, are likely actually to benefit by the eligibility it confers on them, it seems to me that really it is only to members of the Calcutta public, and of the still smaller publics at Madras and Bombay, that a road to high place is opened by this measure. Indeed when I look forward to what will probably happen when this step shall have led to another, by which it seems strange that it should not rather be preceded, and the same qualification which is now pronounced sufficient for any seat on the bench of the highest Court shall be made to suffice for all lower judgeships and magistracies throughout the country, I am convinced that Europeans not in the Civil Service, and descendants of Europeans, are the only classes on which the advantage of an extended field for their employment by the government will really be conferred. It is by them that the civil servants will be elbowed out. The notion that the native population will be benefited is a delusion. The natives will not even be able to keep hold of what they now have in possession.

It is, however, said that the main object of the clause is to admit a native to a seat on the bench of the High Court. Indeed, the most strenuous promoters of the measure have

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avowed that this is all they desire. It is merely to let a native in that they think it necessary to construct so wide a portal. The merits of the measure, however, depend on the consequences likely to flow from it, not on the wishes of its framers or promoters. Even supposing it certain that it would be of advantage to the general interests that there should be a native Judge in the High Court, the price at which that advantage would be purchased by this measure might be, and I am of opinion would be, infinitely too high. But what is the particular advantage expected to be gained by placing a native on the bench of the High Court? Is it that the administration of justice by the Court will be thereby improved? No; this does not appear to be expected. The only advantage, the expectation of which I find to be laid stress on, and to be supported by any even the least show of reason, is that the measure will gratify the people, and tend to elevate their character. I must, however, confess that in my humble opinion it will do neither. The native who will be selected for that place is likely to be such a one as the people do not look on as one of themselves, a half-Anglified Hindoo member of the Calcutta public, or perhaps a man to whom, in common parlance, the name of "native" would never be applied, a man of the class commonly called East Indians. Practically the field of choice will be very narrow indeed—choice, I mean, of native for the office—even if East Indians shall be counted as natives, much more if they shall not. And supposing the best possible selection to be made, I have no reason to think that the people will be gratified Supposing even that a genuine native, considered one of themselves by the mass of the Hindoos, and respected by them as much as they ever respect any of their countrymen, were to be placed on the bench, I should not expect that the Hindoos generally would be pleased by the appointment, or regard it as a boon; and as for the Mahomedans, I have no doubt that they would very decidedly dislike it. What, indeed, I should rather expect of the people at large, when they not only heard of a particular appointment under the new law, but learned something of the purport and reach of that new law itself as contained in the proposed clause, is that they would be astonished and alarmed at the measure; that they would disturb themselves with anxious conjectures about the covert design of it, and listen with credulity to mischievous rumours set afloat on so tempting an occasion by persons disaffected to our rule; that they would, any rate, see in it fresh evidence of that harassing and perplexing addiction to change which has justly been pronounced to be the worst vice of our government; and that they would not think it calculated to make the administration of justice purer, more intelligent, or more effective, but rather to produce exactly the opposite effects. That in thinking so they would be in the right, I have myself no doubt. I am convinced that the operation of the proposed legislative measure on the administration of justice would, on the whole, be exceedingly pernicious. What direct and immediate effect the services of a well-selected native on the bench of the High Court might produce on the administration of justice by that Court, viewed exclusively of all other considerations, is a different question, and one on which I would not offer so strong an opinion. I observe, however, that Mr. Halliday, whose authority is so much relied on as decisive in favour of having a native Judge in the highest Court of Justice, is of opinion that even in the Sudder Court—a Court, be it remembered, of civil servants unaided even by a single English lawyer—if the best selected native were placed on the bench, there would not be reason to "expect that any particular good would be done by the man himself in the Sudder Court beyond what is now done without him." Now, I cannot presume to think that there will be that need of a native's aid in the new High Court which Mr. Halliday thinks there is not even in the existing Sudder Court. At the same time I will own that, even if I thought differently, if I thought that some slight advantage in the administration of justice might be derived from the services of a native on the bench of the High Court, I should not be convinced that, all things considered, it would be for the good of the public service to open any road to that bench other than those by which, according to law, men now arrive at seats on the benches of the Supreme Court and the Sudder Court. Nor should I be the less clearly of opinion that the proposed clause ought to be rejected, for many reasons, one of which is this: If it shall be carried into execution, we shall have made our judicial system preposterously anomalous, in respect of the legal constitution of the several orders of judicatories. It will be impossible to maintain it in that state without giving rise to discontent, apparently just, constantly on the increase, and fruitful of complaints which cannot be satisfactorily answered. It will be impossible to remove the anomaly by receding, without causing disappointment and incurring disgrace. It will be impossible to remove it by advancing, without making our judicial establishments a scandal and a scourge, and endangering the whole fabric of that administrative system to which, with all its faults, whatever they may be, India owes the inestimable blessing of being better governed than ever she was before, and England the vast advantages which accrue to her, in respect of wealth and renown and pre-eminence among nations, from the prosperity of the greatest and most splendid of her Sovereign's outlying empires.

See Minute by Sir Thomas Munro, 31st Dec. 1824. par. 36.

See Mr. Cameron's minute, dated 16th August 1854.

First Report of Lords' Committee, 1852–3. Q. 3,325.

The people of India, while they have felt the evil, now likely we hope to be soon completely remedied, of the dilatory and expensive procedure of our Courts, have always regarded our administration of justice as giving them one great advantage. It is this, that they have invariably enjoyed, at least in the appellate judicatories, the benefit of the integrity and intelligence of the gentlemen sent from England to rule over them. Now let us see what, under our proposed law of procedure, will as to this point be the immediate and direct result if a native be placed on the bench of the High Court. His main

business of course will be to bear a part in the trying of appeals in civil suits from the lower tribunals in the provinces. This of itself will be a direct impairment of what the natives, it has just been stated, prize as so great an advantage. So much is evident without looking more closely into the matter. But let us look into it a little further, assuming that the proposed rules for the trial of appeals shall be adopted. One of those rules is this: "The Courts of appellate jurisdiction shall be constituted by at least two "Judges of the High Court, of whom one shall be of those appointed by the Crown, provided that it shall be lawful for the Chief Justice, if he thinks fit, to direct that in any "particular case the Court of Appeal shall consist of three or more Judges." It necessarily follows that in all ordinary cases in which the native Judge is employed, he will be one of two Judges constituting the appellate Court, and the other will always be an English lawyer, never a civil servant. The cases coming before the appellate Court in which the native sits it may be presumed will seldom be appeals from the decisions passed by the Zillah Judge. When they are such appeals, however, the respect of the people of India for the British Government will not be increased by seeing a native,—such a native too as the one on the bench must be, with whatever care he may have been selected,—act directly and conspicuously as one of the official superiors of so great a British officer as the Judge and Sessions Judge of a Zillah. Nor will the matter be mended by their learning that a civil servant Judge of the High Court, however eminent he may be among civil servants, is not a trusted enough High Court Judge to constitute in conjunction with the native, or even with another civil servant, High Court Judge, a Court for hearing appeals. But suppose that the case is one of the kind which may undoubtedly be expected to be the most common, an appeal from a decision of a native holding the office of Sudder Ameen, or of Moonsiff. And suppose that the two Judges of the appellate Court differ in opinion, one of them, and let us suppose him to be Sir Lawrence Peel, thinking that the decision of the Lower Court ought to be reversed, and the other, the native Judge of the High Court holding that it ought to be affirmed. According to the law recommended by this Commission, the native on the bench of the High Court supporting the decision of the native below will carry it against Sir Lawrence, and finally decide the case. Any comment on this would surely be superfluous.

P. 5. Sect. XIV.

It may be said that the difference of opinion which I have supposed to show itself would not be likely to arise, or that if it arose it would not endure till the time of passing judgment; that the native would either implicitly follow Sir Lawrence Peel's opinion from the first, or have the modesty and good sense to conform his own to it in the end. Very likely he might; though it would much depend on the nature and disposition of the man; for even in India national character does not invariably show itself in the conduct of every individual. But surely it is not to act in any such slavish way, never maintaining an opinion of his own but always backing another Judge's, that any man of any country ought ever to be placed on the bench of any Court of Justice.

It should constantly be borne in mind that the proposed measure of opening unheard-of roads to the bench, though at present in the form of one for Bengal only, is really designed for all the Presidencies. If at any one of them it shall not be brought into operation it will of course produce disappointment and discontent there, and probably not there only, but elsewhere, through the natural sympathies of men who belong to the same class. The way too in which the smaller number of the Judges in the High Courts of Madras and Bombay must necessarily modify the working of the measure is a thing worthy of grave consideration.

I have observed that if the highest judicial situations are to be thrown open as is proposed, consistency will forbid that the existing privileges of the regular Civil Service should be upheld with respect to appointment to any inferior judgeship or magistracy. Thus, as regards this great department of the public business, there will no longer be a close Civil Service. Nor does it seem likely that the change will stop here. Why should it? There is more to be said for, and hardly more to be said against, making it in the revenue department than in the judicial, even now when it has not yet been made in either. It would seem, it is true, from a quotation which has been laid before us from evidence given by a distinguished member of the Civil Service, whom I have already had occasion to mention, Mr. Halliday, that the contrary opinion was entertained by him. It would seem that he not only thought it would be advisable to place a native on the bench of the highest Court of Justice, but thought there was not so much reason for giving any other very high office to a native. Situated as I am, and thinking as I do, I should not be justified in withholding the observation, though I cannot make it but with reluctance, that when the whole of that eminent man's evidence is read and well considered, if I am not greatly mistaken, it will be found to contain within itself enough to prevent even his high name from giving weight to the opinion which he has expressed on the particular question of the expediency of placing a native on the bench of the highest Court. In the general effect, his testimony, I think, confutes his advice on this point. I must remark, too, what I indeed think very remarkable, that, in the very passage which has been quoted, he lays particular stress upon a proposition which he advances as an undoubted fact, but which really is utterly untenable. "It is," he says, "in the administration of justice that the "natives have longest and most effectually served us." The real fact, however, is that of all important parts of the business of Government, the administration of justice, understanding by these words what is evidently meant, the exercise of judicial functions, is the one in which we were latest in beginning to employ the natives,—I, of course, speak of

Mr. Cameron's minute before cited.

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employment on any considerable scale,—and in which consequently they have served us for the shortest time. That they have, on the whole, done good service as lower judicial functionaries, when they have been well watched over and superintended by gentlemen of the Civil Service, I believe to be true. Before they were tried I expected that they would do so; and I now rejoice at this success. But the natives have served us not only longer but at least as effectually in other departments. Not to speak of the police, or of diplomacy, or of the various public departments and offices at the several seats of Government, or of the civil departments connected with the army, I would request any person who has at all made the affairs of India his study, to compare, in this respect, the judicial department with that vast portion of our system of rule, which, in official language, is called the revenue department, but which really embraces very much more of the business of government than it might be understood to do from that designation. In this department natives, acting under superintendence, of course, as in the other, have from the first been extensively employed, and of necessity been entrusted with large powers. They have here, in fact, under superintendence, done everything for us in the execution, and not a little in the formation, of our plans. It could not have been otherwise. We could not have stirred a step without employing them largely, and putting considerable power into their hands. But when we first framed a judicial system we tried to do the whole judicial business of the country ourselves; and until a time which has not yet become distant we persevered in that attempt. Reflecting on all these facts, I cannot find any ground for concluding that it would be more advisable to place natives on the benches of our High Courts than to make them members of our Boards of Revenue. Either step, in my humble opinion, would be a political error; but the former seems, in some respects, even more objectionable than the latter.

I must say a few words more on Mr. Halliday's evidence, that I may secure what I have said from risk of leading to an erroneous inference, which I think would do him injustice, at the same time that it would prejudice my own views by making the authority of his opinion appear more opposed to them than it really is. I have spoken of him as being in favour of placing a native on the bench of the highest Court. The ground which I have for doing so is this: He has expressed a wish to see a native made a Judge of the Sudder Court. He has also proposed that the Supreme Court should be abolished, and the whole of its jurisdiction be transferred to the Sudder Court, one, and only one, English lawyer being at the same time placed on the Sudder Court's Bench. Thus the new High Court contemplated by Mr. Halliday would consist of one English lawyer at the head of the bench, then some seven or eight civil servants, and lastly a native. Now what I am particularly desirous of drawing attention to is, that though he has said he would like to see a native Judge in a Court so constituted, it is not to be concluded that he would approve of the constitution now proposed for a new High Court. I venture to go farther, and to say that from the tenor of his evidence, as well as from his experience in public affairs, and his knowledge of India, I should think it likely that he would be as adverse to that measure as I am.

Q. 3,325, 3,367, 3,368.

Even if, when each department is looked at separately, there seemed stronger objections to breaking down the close Civil Service in the revenue department than in the judicial, still after having abolished it as respects the latter it would be impossible to maintain it as respects the former. The state of India, and the relations which there subsist between those two great departments of civil government, are such that a close service in possession of the revenue offices could not be efficient, could not do what needs to be done for the Government and for the people by the holders of those offices, when the judicial power was in the hands of a set of men antagonistic to that privileged body, and naturally desirous of driving it from that part of the field of public employment which it still occupied.

May I here be permitted to advert to the peculiar character of the Indian Civil Service, as it has hitherto existed I mean, not as it will be when the new plan of recruiting it has wrought the entire change which, if persisted in, it must produce in the character of the body, a topic on which I will not in this place presume to say a word. The civil servants are sent to India young, more of them I believe in their twentieth year than in any other. Formerly many of them went out still younger; and the keeping them all in this country till that age at least, though it may be on the whole a beneficial change, is not without its disadvantages. They have continued, however, to go out so young that but few of them carry with them rooted tastes and habits tending to unfit them for taking cheerfully and heartily to their duties, and to the kind of life which the public good requires that they should lead. Generally, their first public employment is in the revenue department; and here in doing their proper duties they acquire knowledge, experience, skill, and habits of business, which could not be generally imparted to them in any other way. With these things, too, the young civil servant gets other things still more valuable, and still more difficult to be obtained elsewhere, or by different means, just and kindly views of the people's character, a heartfelt interest in their welfare, and the habit of regarding them as the children of the Government,—a view of their relation to it which, how different soever the case may be in England, is the true fundamental principle of all really beneficent rule in India. This view is most advantageously blended in his mind with his sense of his own relation to the Government, not merely as the holder of a place under it, but much more as a member of a privileged body formed and set apart expressly for the purpose of supplying men to fill the highest civil offices in all departments as well at the capitals as in

the provinces. He feels that a paternal charge is committed to him, that he is dedicated to the honourable work of taking care of the children of the state, and promoting their welfare. If he is not incapable of generous emotion, he cannot but feel himself strongly impelled to devote all his energies to that noble object, and make the pursuit of it the chief business of his life. He thus receives a most important training, not less for judicial employment than for advancement in the line in which his service is begun. In Courts of Justice such views and feelings never were and never can be acquired. In all countries it is with the worst classes of the population, and with the worst parts of the characters of individuals, that judicial officers have most to do. This tends to make them apt to think rather too harshly than too favourably of the general character of the people. It does so in India more than in other countries, from a cause much to be regretted, but which can be accounted for without supposing any peculiar depravity of nature in the people, the great prevalence of forgery and perjury, offences which, for obvious reasons, are particularly apt to stir up anger, hatred, and disgust in the breasts of judicial officers.

To have the means of giving those officers that training in the revenue department which is so needful is one of the advantages resulting from the institution of a close Civil Service which supplies men to fill offices in both departments. But it is not only at that early stage in their career when the training in question has just been finished, but also at later periods, nor is it only from the revenue to the judicial department, but also sometimes from the judicial to the revenue, that removals of public servants between those departments can be made with benefit to the public interests. I will be so bold as to avow an opinion, opposed I know to strong and prevalent prejudices, and to a great deal of authority for which I have the sincerest respect. I think it would be bad policy to take a portion of the Civil Service, and form it at any time into a sort of separate profession, a Judicial Service. I am against all approach to such a measure. Every man appointed to any office may of course be regarded as belonging to the department to which that office belongs as long as he holds it. But civil servants ought not, in any stricter sense, to be assigned to the judicial or to any other particular branch of the service.

The offices of Collector and Magistrate are very generally combined: and whatever may be a competent knowledge of law for a Zillah Judge, less can hardly be sufficient for a Collector and Magistrate. Even a Collector who is not also the Magistrate of his district has need of about as much, for the right performance of the proper duties of his office. The amount of that competent knowledge of law is not so vast as to make the acquisition of it an excessively arduous task. We may, indeed, hope that the day is not very distant when the labour of learning all the law which even a Judge of the High Court has need of will be moderate. A Penal Code and Codes of Procedure, both criminal and civil, each of the three forming only a small volume, have been prepared, and are likely soon to be enacted. In those three small volumes will then be comprised, as regards those several branches of law, the whole law of India. A *lex loci*, as to civil rights and obligations, has been planned by the Law Commission which sat in India. The preparing and enacting of such a law seems the next great legislative work to be done. When this has been accomplished, it seems to me that no further legislation of the same description, I mean by codification, will be necessary. I anticipate that the *lex loci* will be found applicable and acceptable, not only to all classes of men other than Hindoos and Mahomedans, but, with respect to a vast majority of their civil suits, to Hindoos and Mahomedans as well as the rest. I conceive that almost the only cases in which it will not apply are suits in which Hindoos or Mahomedans are parties, and which relate to inheritance or succession, or to points dependent on rules of religion or on customs of caste. On such matters generally, the wisest course, I think, for our Government is to abstain from legislating. Here I would leave the Judges to get the law from reported decisions, common books on law, and such other sources of information as are now open to them. It is in a considerable degree variable and flexible. To fix and stiffen it by legislation might do more harm by preventing silent and gradual improvement, than good by promoting uniformity of decision. The suits in which it will be necessary to resort to this kind of law form, I believe, but a small class. The laws relating to matters connected with the public revenue will be found in the Regulation Codes of the several Presidencies and the Acts of the Legislative Government of India. The administration of them generally belongs to the revenue department of the service. Such knowledge of them as is of practical utility in the Courts of Justice can be acquired without difficulty; and civil servants, when appointed to be Judges, may be expected to bring it with them to the bench, together with much other knowledge useful in applying it. In regard to these matters, I have more fear of evil than hope of good from what are called the principles of uniformity and centralization, and would deprecate codification or sweeping legislation in any shape; for I think that by such means the progress of improvement would be more likely to be arrested or impeded than to be promoted. I do not know that even the High Court, except in the exercise of its Admiralty jurisdiction, will have need of any law besides those of which I have now spoken. Law for it in such matters as now belong to the Ecclesiastical side of the Supreme Court will, I presume, be comprised in the *lexi loci*. If I am correct, or nearly correct, in these anticipations, the laws of India will probably soon be in such a state that every civil servant may be required and expected to make himself fully competent, so far as depends on knowledge of them, to perform the duties of the Judge of a Zillah. Of course, all will not have minds gifted with that happy combination of acuteness and subtilty

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with strong common sense which makes a man capable of becoming a great Judge. But the service, unless it shall be damaged by new measures, instead of being, as I think it might be, much improved, may be expected always to supply a few men not unworthy of sitting on the bench of the High Court, along with the barristers appointed to it by the Crown. That the good administration of justice would be promoted by placing on that bench any man not belonging to either of those two professions I see no reason to think. That such a measure, though not calculated to improve the administration of justice, is advisable on political considerations appears to me to be an error. That, as has been argued, it ought to be adopted on the ground that to reject it would be unjust and ungenerous is a fallacy. The question is purely one of policy. It is, what is best for India? Neither justice nor generosity, nor anything else, can possibly ever make it right, that for the sake of any particular person or class of persons the constitution of the High Court shall be made different from what it is best for India that it should be. Our duty is plain: it is to examine impartially into that question, seeking nothing but truth and shunning nothing but error, and when we have arrived at a conclusion then honestly to state it, whatever it may be, whether it be such that we are sure of having the fortune, (I could never consider it good fortune,) of receiving the undeserved praise of superiority in justice and generosity to those whose opinion is opposed to ours, or such as we know will expose us to be undeservedly reproached as unjust and ungenerous.

The notion that the employment of natives of India in high situations is necessary to the content and wellbeing of the people of that country, is derived in a great measure from a source of error belonging to that class to which Bacon gives the name of *idola specus.* They who take up that opinion are for the most part men engaged in public life. To them public employment is the means of living in comfort and respectability, and of acquiring independence; and the hope of rising in the public service is the most cheering support of their spirit and incentive of their activity. They feel that in their own case it would be a miserable thing to be excluded from it, or to be precluded from rising in it to great heights.

They are hence apt to conceive that a people, whatever be its character and condition, must be miserable, if the door of advancement to the highest offices is not open to the individuals who compose it. There cannot, however, be a greater mistake. It is essential to the wellbeing of the people of India that they should be well governed. If they have this blessing, it matters little to them whether individuals born and bred in their own land are or are not employed in high public situations. And it is on our part inconsistent alike with prudence and with enlightened benevolence to inculcate among them the pernicious conceit, that they should look to employment in government offices as the chief means of elevating them as a people, and the only great field for the talents, industry, and ambition of individuals. The change recommended by the advocates for employing natives largely, in situations now held by European civil servants, would not give India better government, but worse. It would not be good either for India or for England; but the greatest sufferers by it would be the people of India.

The continuance of the British rule in India is essential to the prosperity of that vast country and the wellbeing of its inhabitants. But the continuance of that rule requires, I might indeed correctly say implies, that Englishmen shall continue to hold the principal places in the administration of public affairs in that country, if not to the entire exclusion of the natives, certainly at least in a great and far outweighing proportion. Without such preponderance our government can have no stability, our hold of India no strength.

I am of opinion that, consistently with sound and safe policy, we cannot confine the share of the administration confided exclusively to Englishmen, within much narrower limits than those which are to be found in the existing arrangements. But suppose that we can, still, whatever may be the necessary amount of that share, surely by far the best possible way of securing it for Englishmen is by that close Civil Service which for other reasons is so necessary. By that means the object is attained without any violation either of the letter or the spirit of the 87th clause of the Act of William IV. cap. 85., whereby it is enacted that no native of the territories under the Government of the East India Company, " nor any natural born subject of His Majesty resident therein, shall by reason only of his " religion, place of birth, descent, colour, or any of them, be disabled from holding any " place, office, or employment under the said company." The existing arrangements are in strict conformity with this provision: natives of India are not excluded, as such, from any place or office. They cannot, it is true, without being members of the Civil Service be lawfully appointed to situations which the law forbids to be given to any persons but civil servants,—seats for example on the benches of the Sudder Courts,—just as they cannot, without being barristers, be lawfully appointed to fill seats on the benches of the Supreme Courts. But it is grossly incorrect to represent this as at variance with the spirit of the provision above quoted. That provision it is perfectly plain neither does nor was intended to do anything for natives of India but what it equally does and was intended to do for all other natural-born subjects of the British Crown resident in India. The Act too which contains the provision distinctly maintains the Civil Service, with its privileges. It thus precludes all persons from obtaining any of the offices appropriated to that body without having first become members of it. This may justly be considered as in effect nearly tantamount to shutting natives out from those offices. Persons, however, of mixed European and Asiatic blood, and born in India, have found their way into the Civil

Service; and it is by no means impossible that natives of unmixed Asiatic blood should obtain admission into that body, and so attain to high stations otherwise inaccessible. And yet the securing of the possession by Englishmen of those places which are appropriated to the close service is effected in a degree so nearly approaching to completeness as to be sufficient.

With respect to the legal eligibility to office of men not in the regular service, whether natives or others, with the exception of Judges appointed by the Crown, it is best that it should generally be determined, as at present, in such a manner that there is a line above which the offices are filled by members of the regular service only.

I have been discussing the subject of the employment of natives as if it were really the great question before us. But I must call attention to the fact that it is but a part, and, important as it is, by no means the most important part of that question. A particular view of it has been made the basis of an argument, which I think would be unsound even if that view were correct, for the great innovation in policy which is proposed. At the same time I think that view very incorrect, and have considered it my duty to endeavour to show that it is so. It will have been seen that in my opinion, if the particular extension of the employment of natives which is contemplated should be effected, it would not be beneficial to the public service or to the people of India. But supposing the proposed measure to be carried, the consequences, I am convinced, instead of answering the expectations of its advocates, would be adverse to the employment of natives. When the barrier which fences off men not of the close Civil Service from the offices appropriated to that body was broken down, natives would have no chance of success in the struggle for the places thrown open. They would have no chance even of keeping what they now have. It is by the present system, and especially by the instrumentality of the Civil Service, that they are protected, cherished, favoured (as it is right they should be), and maintained in possession of a multitude of public offices, suitable and precious to them, and of no small dignity in their estimation. That protection removed, the energy of the Anglo-Saxon race would triumph over them and trample them under foot, leaving to them nothing that was worth taking from them. That would be the general result; and if it were qualified, as perhaps it would be, by giving natives a very small number of higher places than any now held by them, this would be no compensation for depriving them of great numbers of places more suitable to them, and subjecting the whole people to a large and rough set in the room of a small and mild set of foreign holders of office.

I believe that very erroneous notions prevail as to the extent to which natives are now employed in the public service, and the value of their offices to them. I beg to solicit attention to this point.

In Appendix No. 3, to the Report of the Commons Committee on India Affairs, of 1852, at page 343, I find the following statement of "Natives of India employed in the Civil "Administration of British India in 1849," and of their salaries, converted into English money, at two shillings per Company's rupee:—

1	at	£1,560	a year.		
8	at	840	to	£960	a year.
12	at	720	to	840	„
68	at	600	to	720	„
69	at	480	to	600	„
58	at	360	to	480	„
277	at	240	to	360	„
1,173	at	120	to	240	„
1,147	at	24	to	120	„

This statement is dated East India House, May 17, 1852, and is signed by Mr. E. Thornton and by Sir James C. Melvill. No persons, either of pure European descent, or of mixed European and Asiatic blood, are included in it. I believe that, even without thinking of the different value of money in India and in England, most men in this country would consider the statement as showing that natives of India are more numerously employed, and on the whole better paid for their services in the civil administration of British India than is commonly supposed. But to arrive at anything like a correct view of the matter, it is necessary to make an allowance for that difference, for it is very great. How much English money may fairly be considered as of the same value to an Englishman, living in England, as a rupee to a native in India, is a question which has often been considered by persons competent to form a judgment on it. The highest value set in this way on a rupee that I know of is one pound sterling; and this estimate was made by a great authority in questions of this kind. The lowest valuation I have met with or heard of makes the rupee to the native of India what ten shillings are to an Englishman in England. I considered the question myself with some attention when I was in India. I thought the highest estimate too high. I believe it was the only one I had at that time met with. Twelve shillings was the sum which I would have ventured to name as what I thought might fairly be reckoned equivalent to the rupee. I have seen no reason since to change my opinion. But I must own that it is not a confident opinion. The question does not admit of accurate solution. However, to be pretty certain of not being above the mark, I suppose ten shillings to be the equivalent, and accordingly multiply the sums in the table by five to find the salaries which to Englishmen in England would be as good

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as those received in India by natives of that country. The table, thus modified, is as follows:—

1	at	£7,800	a year.		
8	at	4,200	to	£4,800	a year.
12	at	3,600	to	4,200	„
68	at	3,000	to	3,600	„
69	at	2,400	to	3,000	„
58	at	1,800	to	2,400	„
277	at	1,200	to	1,800	„
1,173	at	600	to	1,200	„
1,147	at	120	to	600	„

The salaries received are at least as good as the above would be to Englishmen in England. This is certainly true in regard to a vast majority of cases, though possibly there may be a small number of exceptions.

A fair comparison of the salaries paid to natives, and the salaries paid to members of the close Civil Service with reference to the value to the recipients, will present results still more remarkable than those which we have just had before us.

Mr. George Campbell, in his book on the Government of India, observes that few men would resign an office of 1,000*l.* a year in England to get one of 3,000*l.* a year in India; and that Englishmen practising private professions make charges and profits three times as large in India as in England. On these and other grounds he concludes that we must divide the salaries of offices held by Englishmen in India by three to find the equivalent salaries in England. It seems to me that this estimate can hardly be very wide of the mark. But let any person take the trouble of dividing by three the salary of even the highest offices under Government held by civil servants in India, and comparing the quotient with the remuneration of natives as exhibited in the second of the two tables above inserted, and he will find the high functionary of the Civil Service to be really far less highly paid, as regards the value of the salary to the recipient of it, than a great many natives are. The highest salary of any civil servant below the rank of a member of the Executive Council is 5,000*l.*, one third of which is 1,666*l.* And be it remembered that the offices on that high salary are very few, and generally are obtained only by men of distinguished merit, and after some twenty-five or thirty years of service.

Even if we reckon the salary in India half as valuable to an Englishman as the same salary would be to him in England, the comparison will still show great superiority in the remuneration of the higher classes of native officers.

Considering that India is not a politically independent country, but is, and for the good of its people must be, subject to the efficient, strong, thorough rule of this different and distant country; considering, too, that the period at which the state of things was what is shown by the statement from the India House on which I have been remarking, is now six years since, and that improvement in the arrangements connected with the employment and remuneration of natives, we have reason to believe, has been and is going on, and that we ourselves in this Commission venture to suggest an increase in the salaries of native judicial officers; it does appear to me that the facts of the case as now before us do not afford us ground for considering the natives of India so illiberally and ungenerously treated under the existing system, so trodden under foot and excluded from office by a grasping and engrossing close Civil Service, as to make it fitting that this Commission should step out of the line of the duty we have in hand, of amalgamating two existing Courts, and take the opportunity of proposing for the benefit of the natives, to make, by a momentous innovation on the political principles of that system, a new road to high place: which after all will to be sure be open to natives, but will be equally open to other persons not in the regular Civil Service, and is likely to be much more travelled by the other persons than by the natives. As a further consideration adapted to moderate the excessive ardour of generous impulses to take part in what is thought the great and good work of placing natives of India in high public posts, I earnestly entreat my esteemed colleagues to reflect on this truth,—their admission of which I venture to anticipate,—that it would not be wise to do at once all that ever can safely be done in that way, and so make it impossible for the British Government at any future time to win the grace of granting any new advancement in office to natives, without detriment or danger to the public interests. That grace is not a valueless thing. The consciousness of having got it gratifies generous impulses, and affords pleasure in other ways. Of this I believe we all are fully sensible. But higher good can be gained from it. The possession of it by the British Government of India—I include in the meaning of these words the authorities of Indian Government in this country—is advantageous to the public interests. It ought to be produced in as great quantity as sound policy permits, and no greater; and that Government ought to have the whole of it. Not a particle should be forestalled or wasted. To the people of India, it is true, the proposal now under discussion would, in my opinion, be detrimental and unacceptable instead of being a thankfully accepted boon. But the supporters of that measure think differently; and it is on their own view that I make this appeal to their public spirit.

It will have been seen that, for the reasons which I have stated, I think that the proposed recommendation will do much harm if it shall be adopted and acted on. I also think that, if

persisted in, it will do harm even should it not be adopted. The report of this Commission will be printed; and will be read not only in England but in India. The recommendation will cause excitement there. Its not being carried immediately into execution will be a grand grievance in the hands of the noisy and turbulent agitators of the press and public at the capital towns. It will help them to foster and make more and more serious the wild and foolish notions which manifested themselves very lately in a monster meeting at Madras. Deplorable consequences may follow. But I confine myself to suggesting this topic. I have no doubt that it will receive all due consideration. I will only observe on it further, that it is unwise to run even the smallest risk of a very great evil, without necessity. Nothing could be more dangerous than for rulers to have the habit of doing so: it is sure to lead to some terrible disaster.

In moulding a system of laws for India we ought to keep constantly in mind how important it is that they shall be in harmony with durable institutions suitable to the condition of that country and its population. The regular Civil Service is an institution admirably adapted to India, and the system of laws in preparation for India is in perfect harmony with that institution. Yet in introducing that system of laws it is proposed to join to it a measure which will in itself be a heavy blow and great discouragement to the Civil Service, and which, through the operation of the new policy which it will inaugurate, seems likely ere long to crumble that institution into dust. I am afraid that the organization of that perfectly unique polity, the British Power in India, and the way in which the working of its several parts, through opinions, feelings, and habits, sustains the stupendous fabric, are but little understood, too little for safety. The Civil Service is a most important part of that polity: it is in India what the aristocracy has been said to be in this country, the ballast of the vessel of the constitution: it is that and much more: and I firmly believe that it is impossible to diminish its weight without danger to the empire.

Alike in the army and in all civil departments, the principle obtains that the members of the regular service, the English gentlemen, fill all the highest places. Throughout both services the natives are confined to subordinate posts. This arrangement has always prevailed, and is looked on by the natives themselves as natural and right. There is not among them a thought or a feeling against it. All native servants of Government, the civil and the military equally, consider it as an essential part of that system of government, which gives employment with at least subsistence to themselves, and security with a large share of happiness to the country. But once break through the rule, by placing natives high over English gentlemen in the Civil Service, and can it be expected that the native soldiery will rest content with their present position? If not, are we prepared to say that a similar change should be made in the army? Remember, that the soldiery understand well our division of power into civil and military, and that they look on the civil servants as in an analogous position to that of their own European officers. Already, indeed, they see native civil officers enjoying much higher pay than any native officers of the army. But they take no offence at this. They see the European civil servants also generally paid much more highly than the European officers of the army. They know that the civil power is the supreme power in the State, and they view without jealousy or discontent the advantages of the civil line of employment. They see that in it, as in the army, the highest natives are under, or at least never over, the lowest Europeans of the regular service. All is consistent, systematic, in accordance with one set of fundamental principles. But make a signal departure from those principles in any great department of the Civil Administration, and it will, ere long, be difficult to maintain them, and at the same time impossible, without great peril, to depart from them in the army. Carry the new principles, however, still further into effect, or wait till they carry themselves into pretty full effect, till the seed which has been sown produce its fruit of an entirely open Civil Service, and there is no longer a close body of civil servants corresponding to that close body of military servants, the British officers of the army;—I will not venture to speak of the consequences, beyond saying that I fear they will be awful.

The basis of our empire in India is the belief of the natives that we are superior to them as men, especially in the qualities which give ascendancy in government and victory in war. And it is a solid basis; for the belief is correct. There is not the least danger of shaking it by enlightening the natives. The more light we impart to them, provided only it be true light, the more clearly they will see that the superiority of our race is a fact. The more clearly, too, they will perceive another truth, second only to that one in vital importance to our and their interests,—the beneficence of our rule. This truth, however, is not like the first, a natural fact. The belief of it by the people is almost equally essential to the permanence of our power; but it is conceivable that we should lose this support of our Government by ceasing to be entitled to it. And it is quite possible to weaken to a dangerous degree even the belief of the people in our superiority to them as men, by taking pains to show that we have no faith in it ourselves, and to inculcate on them an opposite doctrine. I yield to no man in sincere and earnest desire for the good of the people of India, and especially their intellectual, moral, and social improvement and elevation; but I differ from some of my friends in this Commission as to the means by which those objects can be effected. It is my belief that they would not be promoted in the smallest degree by placing a native on the bench of the new High Court. At the same time I have the firmest conviction that it would not be advisable for the interests of India that Parliament should empower the local Government to appoint to that bench any person who neither is a native nor a member of the Civil Service.

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Supposing it deemed desirable that a native should be placed on the bench of the High Court, and that innovation in regard to legal eligibility to such a Judgeship should for the present be carried no farther, the only obstacle to following that course is the clause above cited, the 87th of the Charter Act of 1853, which has most erroneously been considered to be favourable to the employment of natives, while it really is directly the contrary. The only practical effects of it that I know of are these, that it deprived the natives of certain offices which they highly prized,—I particularly allude to the offices in the Presidency of Madras, the holders of which were designated as "Native Judges," a name plainly indicative of contrariety in the institution of those offices to the law of the clause; that it confirmed and supported, both with legal and moral force, the claim of Europeans not in the regular service, and of persons of mixed European and Asiatic blood, to contend on level ground with natives as candidates for all appointments to which natives are by law eligible; and that it now presents an obstacle, evidently found to be formidable, to opening a door for the admission of natives to the bench of the highest Court, without making that door so wide as to admit other persons, for whose admission the same arguments cannot be employed as are urged for the admission of natives, and whom it may well be thought desirable to leave under their present exclusion, even though it should be determined to make a new portal in order that natives may be able to enter. But the obstacle, though formidable, does not appear to be insuperable. Parliament enacted, I firmly believe with views favourable to the employment of natives in the Public Service, the clause which is really so adverse to that object; and Parliament can repeal that clause, or make exceptions from the rule which it lays down. If the Commission desire to admit natives, and have no desire to admit others by a new road, I would humbly suggest for consideration the question, whether it would not be best to take the straightforward course of recommending that Parliament should empower the local Government to place a native of India, of pure Asiatic blood, on the bench of the High Court, though he have not the qualification required by law for such appointment in the case of any other person than such a native. For my own part I should think that the measure, thus modified, was still very objectionable, but was decidedly less so than in its present shape.

I would humbly suggest that the constitution of the new High Court at Calcutta, in which the Supreme and Sudder Courts there are to be united, might be as follows:—

That the Court shall consist of Judges to be appointed by the Crown from among English or Irish barristers or Scotch advocates of not less than five years standing, and of Judges to be appointed by the Governor General in Council from among members of the Bengal Civil Service of not less than ten years residence in India in the service.

That the number of the Judges appointed by the Crown shall not be less than three or more than five; and that the number of the Judges appointed by the Governor General in Council shall always be larger than the number appointed by the Crown, and shall be as large as in his opinion the public service at any time requires.

That all persons who at the time of the union are Judges either of the Supreme Court or of the Sudder Court shall then become Judges of the High Court, and that therein the Judges of the Supreme Court shall be reckoned to be Judges appointed by the Crown, and the Judges of the Sudder Court to be Judges appointed by the Governor General in Council.

That the person who is Chief Justice of the Supreme Court at the time of the union shall then become Chief Justice of the High Court.

That on any vacancy of the office of Chief Justice the Crown shall have power to fill it up by appointing to that office any barrister or advocate of not less than five years standing not already a Judge of that Court, provided that by such appointment the number of Judges appointed by the Crown shall not be made to exceed five, or by appointing to that office any Judge of the Court, whether appointed by the Crown or by the Governor General in Council; and that if the Crown shall at any time confer the office of Chief Justice on a Judge appointed by the Governor General in Council, such Chief Justice shall not be counted as one of the Judges appointed by the Crown, but shall continue to be counted as one of the Judges appointed by the Governor General in Council.

That on the union the Puisne Judges of the Supreme Court shall, in their order therein, take rank in the High Court next after the Chief Justice, and after them the Judges of the Sudder Court shall next take rank in their order; and that other persons on being appointed Judges of the High Court, whether by the Crown or by the Governor General in Council, shall rank therein in the order of the dates of their taking their seats on the bench thereof.

That the Judges of the High Court appointed by the Crown shall hold their offices during the pleasure of the Crown, but it shall be competent to the Governor General in Council to direct the suspension of any such Judge, or of the Chief Justice, whether he be one of the Judges appointed by the Crown or not, until the pleasure of the Crown be known.

That the office of Chief Justice shall in all cases be held during the pleasure of the Crown, whether the person holding that office be one of the Judges appointed by the Crown or one of the Judges appointed by the Governor General in Council; and that the removal by the Crown of any person from the office of Chief Justice shall be a complete removal of that person from the bench of the Court.

That, with the exception of the Chief Justice when he is a Judge appointed by the Governor General in Council, Judges appointed by the Governor General in Council shall be liable to be removed from their offices by the Governor General in Council, who shall,

however, in this matter as generally, be subject to the orders of the Court of Directors of the East India Company acting under the control and direction of the Board of Commissioners for the Affairs of India.

The foregoing remarks having been written some weeks ago, were then printed and placed in the hands of the members of the Commission. The resolution which gave me occasion to write them has since been abandoned unanimously or at least without a dissentient voice; and in lieu of it the proposition transcribed in the margin has been carried by a majority of four to three. By this proceeding the scheme which it was intended to recommend for the constitution of the High Court has been modified. But it does not appear to me that the alterations which have been made in it are of much real importance. In a practical view it is still nearly or perhaps fully as objectionable as it was. It is true that it does not now, as it did, confer legal qualification for a seat on the bench of the High Court upon every person, who, in ever so mean a capacity, has been for ten years "in the service of the Government, or of the East India Company." But what has been corrected by this change appeared to me far less dangerous than strange. In discussing the measure I disregarded all grounds of objection to it, but the grave ill-consequences to which there seemed reason to apprehend that it might actually lead, and the remarks which I offered on it, were consequently such that, with but few and slight exceptions, they are equally applicable to it in its modified form.

"Such Court shall consist of not less "than eight Judges, of whom three shall "be appointed by the Crown, and the remainder by the Governor General in "Council; and one of such Judges shall be "appointed Chief Justice by the Crown.

"The Judges to be appointed by the "Crown shall be selected from barristers "of England, and Ireland, and from members of the Faculty of Advocates in "Scotland, of not less than five years "standing.

"The Judges to be appointed by the "Governor General in Council shall be "selected from,—

"1st. Members of the Covenanted Civil "Service of ten years standing; or,

"2d. Barristers of England and Ireland, "and members of the Faculty of Advocates in Scotland, who shall have been "admitted as barristers and advocates of "the Supreme Court or of the High Court "in India for a period of not less than five "years; whether practising at the bar, "or being officers of the Court, or holding "office under the Government; or,

"3d. Persons who have been in the "uncovenanted Judicial Service of the "Government for a period of ten years; "or,

"4th. Persons who have been vakeels "for a period of ten years; or,

"5th. Persons who shall have acted in "the two last-mentioned capacities for "periods amounting together to not less "than ten years.

"*For the Resolution.*	*Against the Resolution.*
"Sir J. Romilly.	Sir John Jervis.
"Sir Edwd. Ryan.	Mr. Macleod.
"Mr. Cameron.	Mr. Ellis."
"Mr. Lowe.	

Perhaps the most remarkable change which has been made is that by which the three seats on the bench of the High Court, the patronage of which is given to the Crown (the number of the Judges of the Supreme Court, who are all barristers, being three) are to be secured by law to barristers, while it is not provided that even one seat on that bench shall be occupied by a Civil Servant. It should be known that the modified scheme, as first laid before the Commission, contained a provision to the effect (not that all, as are all the Judges of the Sudder Court, but merely) that a majority of the Judges to be appointed by the local Government should be members of the Civil Service; and that this provision was strenuously objected to, not as doing too little in the way of securing to the Court the advantage of the peculiar qualifications which civil servants may be expected to bring to the bench, but as unduly favouring the Civil Service, and was struck out. Members of that service, it is proposed, shall only possess legal eligibility in common with four other classes of men. Of those four classes, barristers form one; and a member of that profession who has not remained a single week in the United Kingdom after having been admitted to the bar of England, Ireland, or Scotland, may become legally qualified for the bench by merely holding in India for five years any office whatever under the Government, without having ever either practised in or been an officer of the Court. Persons who have been vakeels for ten years form another class. With the view of throwing light on the probable consequences of their eligibility, I beg leave to quote a sentence from the evidence of Mr. Halliday:—"English barristers from the Calcutta Supreme Court are now largely "practising in the Sudder Court, and bid fair to monopolize the practice there." I apprehend that for the moment Mr. Halliday overlooked the share of that practice which English attorneys, acting as vakeels, had obtained. But if there is ground for the opinion that Englishmen would have monopolized the practice in the Sudder Court, surely they cannot fail to become possessed of it all in the High Court. After they have done so, I do not see how any native can arrive at a Judgeship through the eligibility conferred on vakeels. It cannot, I conceive, be in contemplation that a vakeel should ever be taken from the bar of one of the Courts in the provinces, and placed on the bench of the High Court at the capital. If any native, however, is to be very soon placed on the bench, I should think it likely that he will be taken from the class of vakeels; though I cannot help fearing that it will be difficult to make such a selection that, putting aside objections on the ground of impolicy, the appointment will not cause much dissatisfaction, especially among the natives. Another class consists of persons who, not being members of the

First Report, Lords Committee, 1852-53. Ques. 3, 346.

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regular Civil Service, have held judicial offices under the Government for ten years. Lastly, a class is formed of persons who have acted in the two capacities of vakeel and judicial officer for periods amounting together to not less than ten years. On these two classes I refrain from offering any particular remark. On the whole scheme I will offer only one more observation, which is, that it seems to me very adverse to the maintenance of such a Civil Service as Her Majesty's Indian empire requires, very adverse also to the employment of natives, and only favourable to the employment of Europeans not in the regular Civil Service, and of the descendants of Europeans.

In accordance, as I believe, with the unanimous sense of the Commission, I think it right to state the fact, that if Mr. Hawkins still had a vote he would have given it against the scheme above remarked on, and the number of votes for and against would have been equal. He would also have voted against the scheme remarked on in the first part of this paper.

The rule cited in the first part of this paper respecting Courts of appellate jurisdiction to be constituted of Judges of the High Court has been expunged, and by a majority of four to three, it has been resolved to recommend the enactment of a rule by which the Chief Justice is empowered to determine from time to time "what "and how many Judges of the Court, whether "with or without the Chief Justice, shall from "time to time constitute Courts of Appeal, and "what and how many Judges, whether with or "without the Chief Justice, shall constitute Courts "of original jurisdiction."

For the Resolution.	*Against the Resolution.*
Sir J. Jervis.	Sir J. Romilly.
Sir Ed. Ryan.	Mr. Macleod.
Mr. Cameron.	Mr. Ellis.
Mr. Lowe.	

It seems to me unadvisable that this power, the right exercise of which will sometimes depend on considerations of extreme difficulty and delicacy, should be placed by law wholly in the hands of whoever may at any time fill the office of Chief Justice. I would rather give the power to the collective body of Judges, and let the Chief Justice have a second vote in case of their being equally divided. I am, however, inclined to think that in case of disagreement among the Judges, whether they were equally divided or not, a right to interfere and decide the matter, on an application from any of them, might with advantage be reposed in the Governor General in Council. Besides other reasons for such an arrangement, it seems to me that it would be in harmony with the proposed provisions to the effect that any of the Judges may be sent into the Mofussil on special commission by the Governor General in Council, to exercise either civil or criminal jurisdiction. Here unquestionably the Government is invested with authority to determine occasionally how Judges shall be employed.

J. M. Macleod.

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APPENDIX D.—No. 2.

Minute by the Lord Chief Justice of the Common Pleas and Mr. Ellis.

After attentively reading the Minute in which Mr. M'Leod sets forth his objections to the scheme which has been proposed, by the majority of the Commissioners, for the selection of the individuals who are to compose the High Court, and after attentively listening to the arguments which have been urged in support of the scheme and in answer to Mr. M'Leod's objections, we feel bound to refuse to concur in recommending the adoption of the scheme.

If it were necessary for us to decide between the two conflicting opinions, we should do so with much hesitation and diffidence. Where those who are familiarly acquainted with the institutions and feelings of the English and native inhabitants of India are unable to agree in their views, it would be impossible for those who have no such acquaintance to pronounce a judgment without the most painful doubt and anxiety. Still, if we felt that this duty was imposed upon us by the Commission under which we are acting, we should attempt to perform it, however inadequately. But we do not understand that we are called upon or expected to do so.

Whatever ought to be the decision upon the question between Mr. M'Leod and those who dissent from him, it seems clear to us that the question itself is political, not legal. Both the objections to the change and the arguments in its favour rest, as we think, upon considerations which it is not within our province to discuss. Suppose that in the year 1810 it had been determined, in this country, to effect a fusion of legal and equitable jurisdiction, and that a commission had been appointed to report on the best way of constituting a Court which should administer both law and equity, the commissioners would surely not have been justified in entering into the question whether Roman Catholics, or persons who had not taken the Test Act, should be allowed to be Judges of such a Court. That appears to us to be a case very analogous to the present case. Our business is to report on the best way of constituting a tribunal which shall unite the functions of the Supreme Court to those of the Court of Sudder Adawlut; and we go beyond our duty if we enter into the question whether the rule which confines the higher civil situa-

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tions in the gift of the Indian Government to the members of the Covenanted Civil Service ought or ought not to be maintained.

We agree, therefore, with Mr. M'Leod in thinking that we ought to proceed on the supposition that the new Court will be composed of Judges who would have been qualified to be appointed in the Courts for which it is to be substituted; but we desire to explain that we do not arrive at this conclusion by Mr. M'Leod's road. Whether his objections to what is proposed be ill or well founded we do not inquire; for we think that we ought, upon either supposition, to abstain from recommending the change. The change, if it ought to be made, ought, as it appears to us, to be made by those whose proper function it is to consider the political questions involved in the determination.

JOHN JERVIS.
T. F. ELLIS.

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No. 3.

MINUTE by MR. CAMERON.

The plan of Judicature and Procedure delineated in the Report seems to me so very great an improvement upon the existing state of things in India, that I advert with much reluctance to the many qualifications with which the assent expressed by my signature must be understood.

But I stand in a position different from that of all my colleagues in this Commission, because I have already announced officially my deliberate opinion upon most of the important questions respecting which recommendations are to be found in the Report.

Of the two sets of recommendations thus presented to the India Board, to both of which my signature is affixed, that bearing the latest date would (if I were now to sign without any qualifying remark) be presumed as a matter of course to be the one to which I ultimately adhere. As this is not the fact, it becomes necessary for me to state that, with some not very considerable exceptions, I dissent from the propositions and doctrines of the Report where they differ from the propositions and doctrines expressed or implied in the various reports, letters, and draft Acts submitted to the Government of India by the Law Commission in that country, and in the various minutes which I had occasion to write as fourth member of council.

I regret that the Report does not show how far the majority of the Commission concur in and how far they dissent from those recommendations of the Law Commission in India which relate to the subjects for which provision is made in the articles comprised in it.

We are directed by our Commission "to make a diligent and full inquiry into, and to "examine and consider the recommendations of the said Indian Law Commissioners, and "the enactments proposed by them for the reform of the Judicial Establishnments, Judicial "Procedure, and Laws of India, and such other matters in relation to the reform of the "said Judicial Establishments, Judicial Procedure, and Laws as may, by or with "the sanction of the Commissioners for the affairs of India, be referred to us for "consideration."

It seems to me, therefore, that in regard to any matters on which the Law Commission in India has made recommendations, or proposed enactments, we are (so to speak) an appellate Commission rather than a Commission of first instance; and that there is a defect in our report analogous to the defect which would be recognized in the judgment of an Appellate Court, if it should lay down law having the effect of confirming or reversing the decision of the Court of First Instance, without taking any notice of such decision.

I cannot undertake to show in detail how I would supply the defect which I venture to point out. But as there is one very important subject on which I am anxious to draw the attention of the India Board,—to the recommendations of the Law Commission in India (I mean their system of pleading),—I can, by suggesting the way in which I think our Report ought to have been drawn upon that subject, indicate what I consider to be the defect of the Report as it stands, and at the same time bring to the view of the India Board the recommendations of the Commission over which I had the honour to preside in India.

I think, then, that the Report should have dealt with the subject of pleading in something like the following manner:

"We (meaning the majority of the Commission, of whom I unfortunately am not one,) have made diligent and full inquiry into, and have examined and considered the recommendations of the said Indian Law Commissioners, and the enactments proposed by them on the subject of pleading.

"Those enactments are to be found in their draft Acts for establishing a Court of Subordinate Civil Jurisdiction at Calcutta.

"We found that the plan of the Law Commission in India was that the Judge should settle the issues of law and fact after having heard the parties (assisted by their legal advisers, when they have any) state their cases in the presence of each other, in answer to such questions as he (the Judge) might think fit to address to them.

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"But that Commission also thought that, in cases at all difficult and complicated, the Judge would not be able to settle the issues with any assurance of having settled them correctly, otherwise than by reducing the oral answers made to his questions by the parties into the form of pleadings; and in framing these pleadings that Commission intended that the Judge should guide himself by those rules of English pleading which, being purely logical in their nature, and having no connexion with the peculiarities of the English Common Law, must of necessity be applicable to the system of law called Equity, and to the Hindoo law, and to the Mahomedan law, as well as to that English Common Law, for the administration of which they were originally laid down.

"After we had considered the plan of the Law Commission in India, and the rules set forth in their draft Acts, with every desire to confirm their views, but with an apprehension that we should not be able conscientiously to do so, we were anxious to see an example of the application of those rules to a case of some difficulty and complexity. We selected for the purpose the case of Blewitt v. Tregonning, 3 Adolphus & Ellis, 554, and we requested Mr. Cameron to draw up the record of that case as it would appear if dealt with according to the above-mentioned plan and rules.

"Mr. Cameron produced the following record, in which he has, of course, assumed that the facts of the case, as they appear in the report in Adolphus and Ellis, are the facts which have been elicited from the supposed examination of the parties by the Judge, and which have been reduced by him into the form of pleadings.

"This assumption may, no doubt, keep out of view difficulties which might have occurred if the case had really been dealt with in the manner supposed, and thus give too favourable an aspect to the plan exemplified. But the assumption was inevitable, and all that can be done to prevent its having an unfair effect is to call attention to the fact that it has been made.

"*Supposed Record of the Case of Blewitt v. Tregonning.*

"BLEWETT *v.* TREGONNING.—TRESPASS.

"Saturday, January 14, 1854.

"*Judge of First Instance.*—It appears from the examination of the parties, their counsel, and attornies, before me, that plaintiff alleges that defendant at various times trespassed on his (plaintiff's) close in the parish of Penangabulo in Cornwall, digging up and getting sand out of the said close, and carrying away the said sand and converting it to his own use.

"That defendant, admitting the facts alleged by plaintiff, justifies the trespass on the following grounds:—

"He alleges that at the time when the supposed trespass was committed, George Simmons was seised in fee of a messuage and land in the parish of St. Erme, in the said county; that the said George Simmons had by prescription in respect of the said messuage and land a right by himself and his tenants to take and carry away from plaintiff's close reasonable quantities of sand for manuring his said land.

"That George Simmons, on the 29th September 1804, demised his said messuage and land to defendant, who thus became the occupier thereof, and having occasion for a reasonable quantity of sand for the purpose of manuring the said land, entered the plaintiff's close and committed the supposed trespass.

"Plaintiff denies the alleged right by prescription.

"There is therefore an issue of fact, viz., is there such a right by prescription or is there not?

"Defendant's counsel then pointed out that as far as could be collected from the statements made by the parties it might turn out that the evidence to be adduced in support of the above plea would prove, not a right by prescription in respect of defendant's farm, but a custom for all the inhabitants of the parish of St. Erme to enter plaintiff's close, and take sand for manuring their lands, and he therefore wished to plead such a custom.

"I said I doubted whether a right by prescription in respect of a particular farm to take sand from plaintiff's close for manure could co-exist with a custom for all the inhabitants of the parish to do so. If such right and custom could not co-exist, the pleas could not both be true, but that I would take a note of the suggestion, and that if at the trial of the issue on the prescription it did turn out that the evidence proved the custom, the plea alleging it should be inserted in the record with an issue upon it, and the finding of that issue for defendant.

"Upon this plaintiff's counsel said he would prefer that the plea should be now pleaded, for that, in his opinion, a custom to take sand for manure from the soil of another was bad in law, and he should therefore demur to such a plea, as well as take issue in fact upon it.

"Defendant accordingly again justifies the trespasses as follows:

"He alleges that plaintiff's close is contiguous to the sea shore; that the sand taken by defendant is sand which had been drifted by the wind from off the sea shore on to the said close. That within the parish of St. Erme there is and has been from time

whereof the memory of man runneth not to the contrary, a custom that all the inhabitants for the time being of the said parish, occupying lands within it, have liberty of entering the said close and taking and carrying away reasonable quantities of such sand for the purpose of manuring the lands in their occupation. That defendant is an inhabitant of the said parish, and an occupier of land therein, and having occasion for a reasonable quantity of sand for manuring the said land, entered the plaintiff's close and committed the supposed trespass.

"Plaintiff denies the alleged custom. There is, therefore, an issue of fact, viz., is there such a custom or is there not?

"Plaintiff also demurs to defendant's last plea on the ground that, if there is such a custom, it is invalid in law. There is, therefore, an issue in law, viz., is such a custom invalid in law or is it not?

"Let this issue in law be argued before me on Saturday the 21st instant.

"Defendant's counsel then proposed to plead five other pleas, alleging five different deeds (all of them lost), by five different persons, granting to persons, through whom defendant claims, the right to take sand for manure from plaintiff's close; but, as he admitted that he had no reasonable expectation of being able to produce anything amounting to proof that such deeds, or even the persons said to have executed them, ever existed, and that he could not show any commencement of the right, which I think is necessary to authorize the presumption of a lost grant, I refused to receive such pleas.

"Saturday, January 21, 1854.

"*Judge of First Instance.* — The demurrer was argued before me. I decided that such a custom as is alleged in defendant's second plea is invalid in law for the following reasons:—

"(The reasons may be supposed to be the same as those given by the Court of Queen's Bench.)

"It becomes, therefore, unnecessary to try the issue in fact on the second plea. Let the issue in fact on the first plea be tried before me on Tuesday the 31st instant.

"Tuesday, January 31, 1854.

"*Judge of First Instance* (after summing up the evidence).—I am of opinion that this evidence, if it proves anything, proves a general custom. Perhaps the evidence would be sufficient to prove such a custom, but I have already decided, upon the demurrer, that such a custom would be invalid in law.

"There is nothing in the evidence to connect it with the estate of George Simmons. Defendant has certainly shown that he has frequently exercised this supposed right, but it appears that others have exercised it also, and it does not in any way appear that defendant exercised it as the occupier of the particular farm which he holds from George Simmons.

"If the evidence had shown any commencement of the supposed right I would have considered whether a lost grant might be presumed; for though there is not any plea or issue on the record applicable to that view of the case, I would have amended the record by the insertion of such a plea and issue. But the evidence did not show any commencement of the right, and, when that is so, I take the rule to be that the evidence is held to prove a prescription and not a grant.

"I find that the defendant has trespassed on the land of the plaintiff, and that he has no such right as that under which he has attempted to justify the trespass.

"The suit is brought only to try the right, and therefore I decree nominal damages."

"After examining carefully the example of the method of pleading recommended by the Law Commission in India, furnished by this supposed record of the case of Blewitt v. Tregonning, we found ourselves reluctantly obliged to dissent from the Commission, whose labours have been submitted to our revision."

I have probably now done enough to show what was the plan of the Law Commission in India, and to make manifest my view of the defect which I have ventured to impute generally to our Report, by indicating a mode in which I would have had that defect supplied in the particular instance of pleading.

I will not proceed to assign the reasons which induced this Commission not to adopt the plan of pleading recommended by the Law Commission in India, because, not assenting to those reasons, I might perhaps weaken their force by my mode of stating them.

The opinions of this Commission upon Criminal pleading, as exemplified in their forms of charges, and defended in the notes, differ likewise from those of the Law Commission in India.

The difference is less important than that relating to pleading in civil suits. I cannot, however, refrain from stating expressly my dissent from a scheme of criminal pleading in which the indictment states no specific facts, but merely alleges that the defendant has committed the crime of which it gives the abstract definition.

The only other point on which I think it right to mention in express terms my dissent from the Report is the preservation of certain distinctions between criminal proceedings against Europeans and criminal proceedings against natives. I believe the time has

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come when these distinctions may be all abolished, and I beg to refer to my minute on the subject.

It is proper to remark that, upon this point, I am stating only the opinion of my individual self. The Law Commission in India has been silent on it.

Upon the question of admitting the natives of India to the new High Court (a question both of judicial and of political importance), I have the good fortune to find the majority of the Commission thinking alike with me. I am writing a minute on the subject, because I feel that the minute written by Mr. Macleod ought not to remain unanswered*.

I conclude by expressing the firm belief I entertain (notwithstanding the objections I have urged) that the Judicature and Procedure delineated in the Report are not only a great improvement on the actual state of things in India, but, so far as my knowledge extends, much to be preferred to the Judicature and Procedure existing in any country upon earth.

C. H. Cameron.

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* Mr. Cameron has been prevented by illness from completing his minute, which will be submitted hereafter.

APPENDIX E.

MINUTES OF EVIDENCE

TAKEN BEFORE

THE COMMISSION APPOINTED TO EXAMINE AND CONSIDER THE REFORM OF THE JUDICIAL ESTABLISHMENTS, JUDICIAL PROCEDURE, AND LAWS OF INDIA.

Saturday, 25th November 1854.

THE RIGHT HON. SIR EDWARD RYAN IN THE CHAIR.

APPENDIX E.
J. F. M. Reid, Esq.
25th Nov. 1854.

JOHN FLEMING MARTIN REID, Esquire, examined as follows:

1. Are you in the service of the East India Company?—I was so; I have retired.

2. For how many years were you in their service?—Thirty-one years.

3. What appointments did you hold during that time?—I was in the judicial branch: for about seven years I was one of the judges of the Sudder, and for ten years before that, registrar of the Sudder Court. The greater part of my time of service was passed in the Sudder Court.

4. Did you act at all as a magistrate in the Mofussil?—Not much, only for about four years when I was in the Upper Provinces.

5. Were you a magistrate or assistant magistrate?—Assistant to the magistrate of Agra.

6. During that time, probably, you had a good deal to do with criminal proceedings?—I frequently had charge of the district during that time. In fact the magistrate put a portion of it under my charge; he had the sole control, but he entrusted the duty to me. In any case of emergency I went to him. I have often had charge of the greater part of the district.

7. Will you describe shortly the way in which cases were brought before you by the darogha?—Upon a complaint being made to the darogha, he generally took the evidence of the parties; and then, if he could, he apprehended the accused, and sent him in to the station of the district.

8. Did he send him in almost immediately?—He was bound to do so within eight and forty hours. He was always strictly looked after.

9. Did he send him in frequently without sending the witnesses, or stating the nature of the evidence against the party?—In common cases the evidence was generally sent; but in heavy cases it could not always be so.

10. When the prisoner arrived at the station, what was the course pursued by the magistrate?—He was generally examined by the magistrate in the first instance, in case he should be inclined to confess, it being well known that if he once got into gaol he would be tutored immediately. Many a man when he first came in would make a confession, and then, afterwards, deny the whole.

11. Was the prisoner brought before the magistrate immediately on his coming in to the station?—Yes. I have known the magistrate go down to the gaol to hear what he had to say, and to have it recorded.

12. Was the man questioned by the magistrate?—Yes, he was asked to explain anything that did not appear clear.

13. Where the witnesses were not sent in, of course the magistrate could be but partially informed of the nature of the case?—There was always a report by the police darogha. The report was generally sent in with the prisoner, though sometimes it came afterwards. The purport of it was, So and so "sent in upon the charge of the murder of" such a person.

14. In cases where neither the darogha's report nor the witnesses had been sent in, have you sometimes proceeded to examine the prisoner?—Yes, that was generally done.

15. In those cases did you endeavour to extract the truth from the prisoner by examination and cross-examination?—He was examined upon any point which did not appear clear, in order as far as possible to elicit the truth from him.

16. What is your opinion of such a system of examination; is it advantageous or otherwise?—It is well known to be the interest of the police darogha to get as much proof as possible against the prisoner; and very often, I am afraid, cases occur of forced confession. It is known that some magistrates would turn out the darogha who failed to obtain proof of a case, and that is very likely to cause forced confessions to be extorted.

17. The question refers to an examination by the magistrate. When the prisoner is brought in to the station, and the magistrate has before him neither depositions, nor witnesses,

APPENDIX E.

J. F. M. Reid, Esq.

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nor a statement of the charge by the darogha, he proceeds, does he not, as well as he can to examine the prisoner?—I suppose in such a case the magistrate could not go deeply into it; he would only ask the man what he had to say for himself, but he could not go deeply into the case without having the papers.

18. What in your opinion is the result of such a procedure; does it tend to elicit the truth, in your opinion?—I believe there is a rule that the prisoner shall not be strictly examined at that time. I am not quite certain, but I think there is a rule to that effect, the object being that, if the accused has been threatened, he should not give his confession under the influence of that threat.

19. Is the darogha present at the time of the examination by the magistrate?—No, his report is sent up from the tannah.

20. If the accused is allowed to go to gaol without being examined by the magistrate, and to remain there for any time, does that make much difference as to the probability of extracting the truth from him?—I should say he would be put upon his trial there, and he would be much less likely to confess; he would be advised not to confess.

21. What do you mean by his being put upon his trial?—The prisoners would get hold of him and say, "take care you do not confess;" it would be a sort of trial, and that would be the result.

22. They do not institute a mock trial, as is the case in England sometimes, do they?—I suspect there is something of the kind among the witnesses outside, but they do not do so in gaol.

23. It appears by the regulations that the darogha has full power to examine and cross-examine the prisoner in any way he chooses?—I think you will find in some of the general orders there is a caution to him against putting too much faith in what prisoners say on first being brought in, for fear they should give evidence under the effects of threats or promises, or the hope of getting off.

24. Have you any means of stating what proportion of the convictions depend upon the confession of the prisoner?—I cannot say.

25. Have you had any experience in the Nizamut Adawlut, as to what has been the result?—Without a reference to the papers I cannot recollect.

26. You probably had, as registrar of the Sudder, the means of knowing?—I had not to try any cases, but I saw a good deal of the cases; I drew up the sentences. It very often happened that the confessions were thrown aside and were not believed, from the nature of the circumstances attending them. The confession was not always acted on, though it might apparently be proved as far as regards the witnesses declaring that it was given correctly. One chief point was, to see what reliance you could place upon the confession; it was tested by other evidence, but never was relied on alone.

27. There appear to be a considerable number of cases in the reports of the Nizamut Adawlut, in which persons were convicted chiefly upon their own confession. Is this one of the advantages of such a mode of examination, that you obtain a knowledge of facts and circumstances which are very important towards the conviction of the guilty parties, though you cannot depend upon what the accused says himself?—That is the chief benefit of the examination. When a man confesses, you test what he says by evidence, to see whether it is borne out, and whether it can be true; for example: a man says he was at such a place; it may be proved that he could not have been there. I recollect the case of a son confessing a murder to save his father's life; he was acquitted, the confession not being believed: he confessed to a murder which was, in fact, committed by his father.

28. Was proof subsequently obtained against the father?—No; I think it was in the district of Nuddea. I recollect hearing of the case.

29. Such an examination would also frequently give the means of tracing the property, would it not?—Yes. It is frequently a long time before the case is ready; in the meantime, upon the confession of the prisoner, the magistrate would send out orders to examine such and such persons, in consequence of any clue which has been obtained from the confession.

30. Is it the usual course of proceeding, that the prisoner is examined when he is brought in to the magistrate, either with or without witnesses; and that upon that examination the magistrate takes steps for the purpose of procuring further evidence?—He may or he may not; if necessary he would do so, or he would wait till the papers came, and would take up the case then.

31. Supposing that the examination in the first instance were abolished, and it were taken afterwards in the course of the trial, or in the course of the hearing before the magistrate; what do you think would be the result?—You would lose that means of throwing light upon the case which you might not get otherwise.

32. You said that sometimes the confession was forced, you stated also that occasionally a forced confession was made from personal motives; would you go the length of saying that such confession is sometimes made falsely, in consequence of its having been forced from the accused by the darogha?—Yes.

33. He adheres to it after the darogha has forced the confession, and when he comes before the magistrate?—Yes; or he will say sometimes: "I never made such a confession, " or if I did it was because it was forced from me by torture or ill usage; they wrote that " down, and made me sign the paper or put my mark to it;" or he would say, "I did make " the confession, but I was forced to do so." I have heard of instances in which it has been absolutely found that they have been tortured. There have been cases where daroghas have been punished for extorting confessions.

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34. Those are cases where the prisoner does not adhere to the confession. Do you think it often happens, where the confession has been forced from him by the darogha, that he adheres to it?—I do not think he would adhere to it throughout. The prisoners in gaol will always advise him not to do so.

35. The question applies to what passes before he is placed in the gaol?—He is under the charge of the burkundazees who bring him in.

36. Do you think falsehood is frequently the consequence of a confession having been previously forced?—If they write down a false confession for him before the darogha, or extort a confession, they make him say what they please.

37. Will he adhere to it afterwards before the magistrate?—I do not think he will adhere to it; he will generally deny it, and try to get off in that way.

38. You said that in some instances cases came in without any report from the darogha? —There is a short petition which simply states, "a murder was committed in such a place "on such a night, and on inquiry I send in this man immediately, and will send the papers "afterwards."

39. In lighter cases, where parties are merely charged with theft, what is done?—The darogha would send them in.

40. What materials would the magistrate have before him in such a case?—In ordinary petty cases he would wait till the papers came: it is only in heavy cases that the magistrate would find it necessary to go to the gaol, or to commence the examination at once; in cases of dacoitee, for example.

41. It is not the practice for the magistrate to examine the prisoner in every case?—No.

42. To what extent does the magistrate, when he does examine a prisoner, inform him beforehand of what the nature of the charge is?—There is no settled practice on that point; generally speaking, the magistrate only examines those who are said to have confessed before the darogha, he asks the man whether his confession is true. I do not imagine that every prisoner is examined in that way; it is only where the darogha has reported a confession.

43. Suppose, in a case of murder, the party has denied the whole matter before the darogha, and has been sent to the magistrate, and the depositions have come up; would not the magistrate in such a case go to the gaol and examine the prisoner, and endeavour to ascertain the circumstances of the case?—I think, generally speaking, it is in cases of confession that an examination of this nature is taken.

44. Supposing a case of dacoitee has been committed, in which several persons were concerned, and one or two have been apprehended and sent to the magistrate, would that magistrate examine them as to the dacoitee in order to find out who the guilty persons were?—If the men all came in denying it, the magistrate would not be likely to get much information from them. It is only in cases of confession that it is of any use to write down what is said; they would deny it altogether or say they were not at the place, and no information could be obtained from them.

45. According to your experience it is not the usual practice, except where the parties have made confessions to the darogha, to examine them upon their coming in to the station of the magistrate?—I imagine the general practice to be, that it is only done when there are confessions; there is no general rule laid down whatever respecting it.

46. It would rest in the discretion of the magistrate, and usually, you say, he does not make such an examination unless there has been a confession?—I should say so.

47. You have stated that the magistrate does not usually examine in cases coming up from the darogha, unless there is a confession stated to have been made before the darogha; you have also stated that, where the prisoner completely denies the supposed offence, there would be no use in writing down anything he may say, and therefore no examination appears. Do you mean to say that, in those cases where no statement of a confession comes up from the darogha, the magistrate does not at all ask the prisoner what he has to say; or do you merely mean that from the fact of his denying it there is no occasion to make any further examination, and to enter it upon the record?—I should imagine there is not any occasion for it. I should say it would be no use to do so. I think it would be generally left till the case comes before the magistrate in court.

48. Would not the magistrate go so far into the inquiry as to ascertain whether the man would deny the charge or not?—The petition of the darogha is always brought to him immediately, and he would see from that whether that had been the case or not.

49. If he saw that the man had denied it upon the petition, he would ask no question? —I should say so.

50. You have stated that upon the trial the confessions are very often thrown aside as unworthy of belief; are you alluding to confessions made before the darogha, or confessions made before the magistrate?—To both. In both cases evidence must be taken before they can be admitted. When the case comes before the session judge the witnesses to both confessions are examined, if the man should have confessed in both cases.

51. If the prisoner, on coming before the magistrate, denies the confession he made before the darogha, is it at once thrown aside without any further inquiry; or are witnesses called who may have heard it, and who may be able to speak to it?—The magistrate would still examine witnesses to the confession.

52. Although the man denies that confession?—Yes.

53. Is not it possible in some cases that that may lead to a conclusion that the confession was a true one, though it is denied?—It may be so.

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54. In such cases it would not be thrown aside, would it?—No, if it was legally proved by witnesses, and the court believed it, they would act upon it as they would upon any other evidence.

55. That must sometimes happen, must not it?—Yes, there may be cases where a man is convicted on his confession to the darogha, though he has tried to retract it before the magistrate.

56. What would in your opinion be the effect upon the administration of justice, if the prisoner were not allowed to be examined, nor any question put to him as to his guilt or innocence, either by the darogha or by the magistrate?—I have not considered the matter attentively, but I think the darogha might be prohibited from examining him, because it is a cause of abuse occasionally, and leads sometimes to his forcing confessions from prisoners. But I certainly do not think the magistrate should be prohibited from examining and endeavouring to get the truth from a prisoner. I think it is the source of great oppression occasionally, that the darogha should have the power; his character is at stake, and often his situation. If he sends in many cases and they are not proved, the magistrate tells him that he is not worth his situation; that induces him to do all he can to get confessions, generally speaking. It is only, however, looking on it in the worst light, that it is liable to that abuse.

57. When did you leave India?—In March 1847; about seven years ago.

58. Up to what year were you assistant magistrate?—From 1816 to about 1821, and then I was another year in the same situation in Bengal. I was assistant to the registrar of the Sudder till 1826. There I had the same sort of duties to perform. I had to prepare reports.

59. Mr. Macnaghten was then the registrar?—Yes, and I was his assistant, and afterwards deputy registrar. From 1826 to 1830 I was civil judge of Bancoorah, where I had frequently to take charge of the magistracy. Then after that I succeeded Mr. Macnaghten as registrar in 1830. I was always in the Sudder from that time; about ten years as registrar, and about seven years as judge.

60. Do you think the examination before the magistrate inflicts any hardship upon the prisoner?—No, I do not think it does. I think in many cases it would be a hard thing to the prisoner not to examine him and hear what he has to say, in order to test the evidence, and see whether the magistrate can summon any witnesses for him. I should think the magistrate ought to have the power of examination.

61. You think if the prisoner has any defence it rather tends to assist him in preparing it?—I should say so.

62. You were understood to say that the magistrate seldom examines a man in gaol unless the darogha has transmitted a report of his confession?—Yes.

63. It is the law in India that "insolent or disrespectful behaviour towards a judge "while sitting in court, or any other offence within the hearing or view of a judge while "sitting in court, tending to interrupt the due course of business, shall be deemed a contempt "of the authority of the court, and shall be punishable by fine not exceeding 200 rupees, "which may be commuted to imprisonment at the public expense in the civil gaol for a "period not exceeding three calendar months." That is in substance the existing law of India?—Yes.

64. From such a sentence, as the law now exists, there is always an appeal; that is, if a person conducts himself disrespectfully in court, and the judge orders him to be fined or to be committed to gaol, there is a general power of appeal from that order at present. The Commissioners wish to ascertain from you what is your opinion as to the advantage of that appeal, and whether it is necessary for the due administration of justice that there should be an appeal in cases of that description?—From the native judges I think there should be an appeal. I should be afraid to trust the moonsiffs with a power of fining in that way without an appeal.

65. What do you think as to the necessity of an appeal in the case of the Principal Sudder Ameen and the Zillah judge?—From the better educated judges I should not so much desire an appeal. As regards the moonsiffs and deputy magistrates, I should think it would be very dangerous to take away the power of appeal in such cases.

66. Has any instance of an appeal from a sentence for contempt come before you in the Sudder Court?—Very seldom. I have seen one or two such cases, but very few; it has been very seldom that any appeals of that nature have come up to the Sudder.

67. Do you recollect the result in those cases which have occurred?—They have been so few that I hardly recollect them. I do not recollect ever having had a case myself.

68. When acting as a civil judge, do you recollect having had any such appeals before you?—The law was not in force at that time, I think. I have not had anything to do with the interior since 1830, and it was not the law then. I forget whether there was an appeal from a judge to the higher courts then, though I know there has been latterly.

69. It is proposed at present to allow an appeal in India from an order of fine or imprisonment in such cases of contempt, that the order of the court shall state the facts constituting the contempt, and that the correctness of such statement of the facts by the court shall not be open to question upon the appeal. What do you think of such a proposal as that?—I hardly know what to advise in a case of that kind; but it strikes me that, if there is an appeal, the appellate court should be open to consider everything.

70. You would have an appeal upon the facts, would you, as well as upon the question whether the punishment was such as ought to have been inflicted taking the facts to be

true?—I would have an appeal upon the matters of fact. Supposing, for instance, a man has taken up a paper and thrown it in the judge's face (a case which has occurred); how could you deal with that case unless you had the facts before you? You must take it that the man actually did the thing; and then the only question would be, whether the fine of 200 rupees was too much or too little. The man might say "I did not do so;" but, the Judge saying he did so, there would be no appeal from his statement. All that you would decide on then would be your own feelings, as to whether 200 rupees was too large a fine or not.

71. You would leave it open to the party to contradict the statement made by the judge, that the paper had been thrown in his face?—Yes.

72. And you think he should be able to call witnesses to disprove it?—Yes; if you have any appeal at all, I would not restrict him on that point.

73. You say that you think such an appeal necessary in the case of the moonsiffs?—It is certainly necessary in the moonsiffs' courts and generally speaking in the native courts.

74. Would you say that there should be an appeal from the moonsiffs, from the Sudder Amins, and from the Principal Sudder Amins?—They are all three of the same class.

75. Would you have a power of appeal from the Zillah Judge?—When a man has come to be a Zillah Judge, he ought to have sufficient discretion to make it safe to leave him the power without appeal.

76. There should be no appeal from him, you think, either as to the fact or as to the amount of the punishment?—You must place some confidence in him. I cannot place that confidence in the native judges, without great supervision, that I would place in the Zillah judges and the magistrates.

77. You would put the sessions judge and the magistrates upon the same footing in that respect?—Yes.

78. Being Europeans?—Yes.

79. You would trust Europeans, but you would not trust native judges?—Quite so.

80. The distinction you make is not on account of race, is it, but because the one is not so educated a man as the other?—I have the opinion that the natives do not possess the same sound morality that you look for in the case of an educated European.

81. You would trust European judges, but you would not trust the native judges, with such a discretion?—Quite so.

82. Europeans are eligible by the law, are not they, to the office of moonsiffs?—They are.

83. Would you make any distinction between a European and a native filling the office of moonsiff?—I do not think you could do so; that would not be a fair distinction, I think; the two men having the same authority. I would restrict the right of appeal to certain courts, without making any other distinction.

84. You would not trust the moonsiffs with the power of committing for contempt without appeal, and you would not trust their report of the facts; you think the one would be as dangerous as the other?—Yes.

85. What do you think would be the effect of taking the judge's statement to be true, and not allowing it to be contradicted?—It would give the moonsiffs too much power, I think.

86. You think untrue statements would be made?—Yes.

87. Do you apprehend no danger on the other hand from allowing a native to contradict the statement of the Judge, considering the nature of testimony in India?—That consideration would go to do away with the value of evidence in all cases whatever. You must trust to evidence in that case as you do in others.

88. Have you thought as to the best way in which the statement of facts might be impeached by oral evidence?—It should be done just as it would be in any other appeal—if necessary you would take evidence on both sides.

89. Do not you think that it might operate to prevent the judges from keeping proper order in their courts, if they were subjected to be placed in that position by any person whom they thought it necessary to fine?—It would be a bad thing to take away the power of fining altogether, because then they would be perfectly helpless.

90. If you gave the power and allowed an appeal, would not the appeal operate as a severe check upon the use of the power?—It would, and also upon the abuse of it too. If the judge knew there was a right of appeal from his order, he would not be so apt to exercise the power, and it would be less likely to be oppressive.

91. Might not this happen, that he would look round the court and see whether there were any witnesses who would not concur with him, or whether they were mostly friends of the prisoner?—When a man is in a rage or angry he would not be looking about the court to see if there were witnesses or not.

92. Do not you think that, if no appeal was allowed in such cases from the orders of the inferior judges, there would be a great many more criminal charges against them in consequence of there being no way of obtaining a revision of their proceedings by appeal?—That would be very likely to be the result. A man might bring against them a charge for improper conduct in court, or for abuse directed to him.

93. Do you think those inferior judges themselves would prefer that there should be an appeal on such orders?—I should think they would rather prefer that there should be no appeal from their order.

94. Of course cases of contempt are more likely to arise before a court exercising original

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jurisdiction than an appellate court?—Only because there are more people present and they are more interested; in an appeal court you do not call witnesses. There are a fewer number of people likely to commit the offence.

95. There is more excitement among the parties, is not there, during the trial of a case than an hearing an appeal?—If a man is trying to get an order reversed, or to uphold it, there is likely to be as much excitement.

96. Is not almost the whole of the original jurisdiction of the presidency of Bengal at present exercised by natives?—I believe almost altogether; hardly any original civil business is done by the judges.

97. The natives are entrusted with the whole of the business?—The native judges have power to try the whole of the civil business in the first instance.

98. Therefore from the decisions of those judges who are exercising the whole of the original jurisdiction of that presidency you would have an appeal in all cases of contempt of this description?—Yes: I believe no native is ever satisfied with the order upon his case if there is not an appeal to the higher courts. I have heard them say so themselves, that they look upon the appeal to a European judge as the greatest benefit possible.

The witness withdrew.

R. Torrens, Esq.

ROBERT TORRENS, Esq., examined.

99. You have been in the civil service of the East India Company, have you not?—I was for a long period, for upwards of 25 years.

100. How long have you retired from the service?—About 2½ years.

101. What appointments did you hold?—When I was first declared qualified for the public service, I was appointed assistant to the collector of land revenue and to the salt agent of the 24 Pergunnahs. After that I was appointed for a short time to act as assistant to the sub-treasurer in Calcutta. I was then sent to act for about a year as collector of revenue of the district of Tippera. After that I was appointed joint magistrate and deputy collector of the district of Bogra.

102. How long were you joint-magistrate and deputy collector?—Three years or rather more. After that I was appointed to the same situation in the district of Malda; and from there I was appointed magistrate and collector at Moorshedabad.

103. How long were you magistrate and collector at Moorshedabad?—Seventeen months. From thence I was removed to Chittagong as additional judge, with merely civil jurisdiction. I was then appointed civil and sessions judge of the district of Mymensing. I returned from that to the 24 Pergunnahs as magistrate and superintendent of the Allipore Gaol. I was then appointed to the civil and sessions judgeship of the 24 Pergunnahs, and held it several years. The last appointment I held was commissioner of revenue and police in the 16th division, commonly called the division of Chittagong.

104. When the darogha sent in prisoners to the magistrate, while you were acting, sometimes, doubtless, the witnesses and the darogha's report accompanied them; but on some occasions did not the darogha's report only come up in the first instance with the prisoners?—Not the full report of the darogha.

105. A short report was sent up?—A kind of notice of what the prisoner had said; generally speaking, the prisoner came in by himself, and the witnesses were sent afterwards.

106. What course did you as a magistrate pursue upon a prisoner coming into the station without the witnesses?—It depended upon whether he was a confessing prisoner or a prisoner who denied his guilt. In the case of a confessing prisoner I immediately took his confession; if he had confessed to the darogha, I immediately took his confession before witnesses. In the event of his not confessing, I waited and examined him in court. I considered, where the prisoner denied his guilt, that there was no necessity for immediately taking down his examination.

107. In the case of any great dacoitee, or a case of murder or any very serious offence, supposing the accused had not confessed, did not you in those cases examine him as soon as he came in?—I may have done so occasionally.

108. It was not your usual practice?—It was not.

109. Your usual practice was only to examine him where he had confessed before the daroghâ?—Only in cases where he had confessed before the darogha.

110. The darogha sent you a message or a note saying, "this man has confessed;" and then you took the confession again?—He reported that he had confessed, and sent in also his confession with the prisoner. The prisoner first of all confessed to the darogha, and then his examination was again taken before the magistrate, or his confession if he wished to repeat it.

111 In cases where this sort of confession or report was sent in by the darogha, did you pursue it by any actual examination of the prisoner; did you examine into the circumstances of the case, or only tell the accused that he might make any statement he pleased?—It was an examination. The question was put to him what he had to say upon such and such a charge, and then he was at liberty either to deny his guilt or repeat his confession before the dârogha.

112. Were you satisfied supposing he said, "I did not do it," and did you no further inquire into the circumstances?—Of course I took the evidence afterwards.

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113. The question refers to the preliminary inquiry when the prisoner was first sent in?—I would ask him as many questions as I could in order to arrive at the truth. I should do so as a magistrate.

114. You questioned the prisoner when he came in?—Yes; for instance, in the event of his denying his guilt before me, as magistrate, I should say, "did not you admit your guilt before the darogha on such and such an occasion?"

115. Did you inquire from the prisoner such facts as might lead to witnesses being obtained?—I did, as magistrate.

116. You say, you did this as a general rule only where the man had confessed to the darogha?—Yes.

117. Where a written confession had been taken by the darogha and sent to the magistrate?—Yes.

118. Assuming that the system of taking written confessions by the darogha were abolished, but parole confessions might be still made to the darogha, would it in your opinion be of more or less importance, by an examination of the accused, to confirm and verify the statement of the darogha as to the confession which was said to have been made?—I should think you would be more likely to get at the truth if you at once examined the prisoner.

119. It has been suggested to the commissioners that in many cases you could not get at the truth unless you did so?—As far as my experience goes, I am of that opinion.

120. What would be the result if you were to allow the party to go to the gaol before you examined him?—I think a defence might be suggested to him in the gaol, that would perhaps defeat the ends of justice.

121. The usual course is to institute an immediate examination of the accused upon his coming into the station?—The only case in which I did so examine him, was in the case of a confessing prisoner. If the man had denied his guilt to the darogha, I should not take the examination immediately, unless the court was sitting; then, of course, his defence would be taken. If the court had broken up, and was not to sit again till the next morning, I should not consider it my duty to take the examination of a prisoner who denied his guilt in the mofussil to the darogha; but if the man confessed, I should at once take his confession or his examination.

122. The commissioners have been told that, in serious cases, those examinations are not only taken while the court is sitting, but that the magistrate goes to the gaol, or even has got up in the night for that purpose?—I should think that that is the custom. With respect to going to the gaol, I am not aware of that being done. I never did it myself, unless where a man may have been badly hurt, and his life may be in danger; then, I dare say, I may have gone, but I have no recollection of going to a gaol. I have often taken confessions late at night.

123. What is your opinion of the importance of the magistrate taking such examinations where there has been a confession immediately the party comes in to the station?—I should think it is of very great importance, that (confession before the magistrate) I think is *the* important document to be guided by. What the prisoner says in his confession before the magistrate, is of great importance; what he says, or his reported to have said, before the darogha, I think is of very trifling importance indeed.

124. The magistrates put no faith in the examination before the darogha, do they?—Not much.

125. Do you think the great object of examining the prisoner *instanter* has been to obtain materials for conviction, or to correct and confirm the examination before the darogha; may not it have been the abuse of the darogha's power of examination, which has led to examination before the magistrate?—I should think the magistrate would have both objects in view.

126. Do you think it would lead to the better administration of justice, if this power of examination on the part of the magistrates were abolished?—In my opinion it would have a detrimental effect.

127. What are your reasons for thinking so?—Supposing the examination before the darogha were no longer taken, I should think it would be of very little consequence indeed. Perhaps it would be attended with beneficial results to abolish the examination before the darogha; but I think it would be incumbent upon the magistrate to examine the prisoner, especially where it had been reported to him that he had confessed. I think he would be more likely to get at the truth.

128. Would you also examine the prisoner at the trial when it took place before the sessions judge?—I would merely ask him if he had anything to say in his defence.

129. You would not adopt the French system of interrogating?—No; we are prohibited from doing that in the judges' courts, we leave it to the prisoner to say whatever he likes in his defence.

130. There are two examinations contemplated before the magistrate: one immediately the prisoner is brought in, and before he has had opportunities for intercourse with other prisoners; and a second examination previously to his being committed for trial.—I was not aware that there were two examinations contemplated.

131. Do not you in any case examine the prisoner when you are taking depositions previously to the trial?—You might do so, but I do not think it is the regular course to do so; at least it is not invariably done: there may, however, be something which you may wish to ask the prisoner upon those occasions of taking depositions.

132. What you said as to the examination before the magistrate related to an immediate examination?—It did.

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133. The law in Bengal now is in substance this, that insolent or disrespectful behaviour towards a judge sitting in court, or any other offence within the hearing or view of a judge while sitting in court, tending to interrupt the due course of business, shall be deemed a contempt of the authority of the court, and shall be punished with fine, commutable to imprisonment, and from such a sentence at present there is an appeal in all cases and from all the judges. Do you think that an appeal in such a case as a contempt of court is desirable or not?—I should vary the right of appeal, and allow it to depend upon the nature of the court. I consider, where the functionary presiding in the court is a very young man, he may often consider an action to be a contempt and decide upon it in a hasty way, and perhaps inflict a fine, where an officer of greater experience upon a more dispassionate consideration of the matter might not do so. In the case of a court presided over by a young officer, I think it would be beneficial to allow an appeal if such a distinction could be made by law.

134. Where would you draw the line, should it have respect to the rank of the court or the age of the parties; beginning, for example, with the Zillah court, would you allow an appeal there?—I do not think it is necessary to have an appeal from the civil and sessions judges, I think they are generally gentlemen of sufficient consideration and experience not to be carried away by a little anger. I would regulate the right of appeal according to the court in which the officer inflicting the fine presided; for instance, I would not give an appeal in the case of a magistrate, but in any court below that I should give an appeal.

135. What would you do as respects the court of the Principal Sudder Ameen?—I should make the experiment, of not allowing any appeal from such a court. I think it would still be an experiment, though I am not aware of any great benefit that would arise from abrogating the right of appeal.

136. In the case of the Sudder Ameen what would you do?—I would make the same reply with respect to the court of a Sudder Ameen. I would make the experiment. Sudder Ameens are generally people of some experience.

137. What would you do as to the moonsiff's court?—I think I should allow an appeal from the moonsiff. He is generally much more remote from any European control than either the Sudder Ameen or the Principal Sudder Ameen: he is generally more remote from the influence of public opinion.

138 The court of the moonsiff is the only civil court from which you think it desirable that there should be an appeal in such cases?—The only civil court.

139. Supposing there to be an appeal from the moonsiff's court, it has been suggested in India that the order of the court shall in such a case state the facts constituting the contempt, and that the correctness of such statement shall not be open to question in the appeal. The appellate Court, therefore, would not be allowed to dispute the facts, but taking the facts to be true would have to decide whether the punishment imposed was a proper one; what is your opinion of that proposal?—As regards the moonsiff's court, I should admit an appeal on both points, both as to the fact, and as to the justice and extent of the punishment.

140. But you would not do so in the other courts?—No; as I said before, I think in the other courts the appeal might be abolished in both respects. The Sudder Ameen and the Principal Sudder Ameen are generally at the Sudder Station; and even if there were not the power in the judge to reverse their decision imposing a fine, I think it would be well known whether it was just or not; and a man for the sake of his own character would not impose one unjustly for a contempt of court. With respect to the moonsiffs, they are very often so far from a Sudder Station that I think injustice might be done, if an appeal were not allowed both as to the fact and as to the extent of the punishment.

141. There is no case in which you would allow an appeal as to the propriety of the mode of treating the alleged contempt, without also allowing an appeal as to the fact itself?—No; in all cases where I gave one I would give the other. I understand the question to relate to the civil courts.

142. Would you draw any distinction with respect to criminal courts?—With respect to criminal courts, the moonsiffs have not invariably criminal jurisdiction. The criminal courts in the case of the joint and the assistant-magistrates are occasionally presided over by young officers, from whom I think it would be advisable to allow an appeal both as to the facts and as to the extent of the punishment.

143. Those would be at present principally Europeans, would not they?—Yes; covenanted servants.

144. From the deputy-magistrates would you allow an appeal?—I would.

145. In short, in criminal cases you would allow an appeal from orders for contempt from all authorities under the rank of sessions judge or magistrate?—Yes; that is in substance my opinion.

The witness withdrew.

Adjourned.

SECOND REPORT

OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO CONSIDER THE REFORM

OF THE

JUDICIAL ESTABLISHMENTS, JUDICIAL PROCEDURE, AND LAWS

OF

INDIA,

&c.

Presented to both Houses of Parliament by Command of Her Majesty.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.
1856.

CONTENTS.

COMMISSION.

L.S.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John M'Pherson Macleod, Esquire, John Abraham Francis Hawkins, Esquire, Thomas Flower Ellis, Esquire, and Robert Lowe, Esquire, Barrister-at-Law, Greeting:

Whereas by an Act passed in the Sixteenth and Seventeenth Years of Our Reign, reciting "That whereas by an Act of the Third and Fourth Years "of King William the Fourth it was provided that Commissioners to be "appointed thereunder, and to be styled the Indian Law Commissioners, "should inquire into the Jurisdiction, Powers, and Rules of the existing Courts "of Justice and Police Establishments in the Territories in the Possession and "under the Government of the East India Company, and all existing Forms "of Judicial Procedure, and into the Nature and Operation of all Laws, "whether civil or criminal, written or customary, prevailing and in force in any "Part of the said Territories, and should from Time to Time make Reports, "in which they should fully set forth the Result of their Inquiries, and should "from Time to Time suggest such Alterations as might, in their Opinion, be "beneficially made in the said Courts of Justice and Police Establishments, "Forms of Judicial Procedure and Laws, due Regard being had to the Dis-"tinction of Castes, Difference of Religion, and the Manners and Opinions "prevailing among different Races and in different Parts of the said Territories;" and reciting, "That whereas the Indian Law Commissioners from Time to "Time appointed under the said Act have, in a Series of Reports, recommended "extensive Alterations in the Judicial Establishments, Judicial Procedure, and "Laws established and in force in India, and have set forth in detail the "Provisions which they have proposed to be established by Law for giving "effect to certain of their Recommendations, and such Reports have been "transmitted from Time to Time to the said Court of Directors; but on the "greater Part of such Reports and Recommendations no final Decision has "been had;" it is among other things enacted, that it shall be lawful for Her Majesty at any Time after the passing of the Act, by Commission under the Royal Sign Manual, to appoint such and so many Persons in England as to Her Majesty may seem fit to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them.

Now know ye, therefore, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John M'Pherson Macleod, John Abraham Francis Hawkins, Thomas Flower Ellis, and Robert Lowe, or any Three or more of you, to make a diligent and full Inquiry into and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. **And** We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons, as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company. **And** Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved Frederick Millett, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Twenty-ninth Day of November 1853, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,
(Signed) PALMERSTON.

COMMISSION.

L. S.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John Macpherson Macleod, Esquire, Thomas Flower Ellis, Esquire, Robert Lowe, Esquire, Barrister-at-Law, and Frederic Millett, Esquire, Greeting:

Whereas We did, by Warrant under Our Royal Sign Manual bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, appoint you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, and Robert Lowe, together with Our trusty and well-beloved John Abraham Francis Hawkins, to be Our Commissioners to examine and consider the Recommendations of the Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as might by or with the Sanction of the Commissioners for the Affairs of India be referred to you for Consideration.

Now know ye, that We have revoked and determined, and do by these Presents revoke and determine the said Warrant bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, and every Matter and Thing therein contained. **And** We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, Robert Lowe, and Frederic Millett, or any Three or more of you, to make a diligent and full Inquiry into, and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. **And** We do by these Presents give and grant unto you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company.

And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved John Abraham Francis Hawkins, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Seventeenth Day of March 1854, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,
(Signed) PALMERSTON.

SECOND REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

We, Your Majesty's Commissioners appointed to examine and consider the recommendations of the Indian Law Commissioners who were employed in India, and the enactments proposed by them for the reform of the judicial establishments, judicial procedure, and laws of India, and such other matters in relation to the reform of the said judicial establishments, judicial procedure, and laws as might, by or with the sanction of the Commissioners for the Affairs of India, be referred to us; having applied ourselves to the duty thus assigned to us as regards judicial establishments and judicial procedure, in conjunction with the preparation, in pursuance of instructions from the Commissioners for the Affairs of India, of preliminary measures for the amalgamation of the Supreme and Sudder Courts at Calcutta, and having set forth the results in our First Report, have proceeded to examine and consider the state of the laws of India: And though it has not been possible for us to prepare a draft of such particular enactments as we would propose for the reform of those Laws, as we did in respect of the Judicial Establishments and Judicial Procedure, yet having arrived at conclusions as to what is most wanted, and seeing that the work of framing law to supply the want could not be performed before the expiration of the time within which it is required by Statute that every Report of ours shall be made, we think it our duty now to report our views on this highly important subject.

The proposed Penal Code, which was prepared by the Indian Law Commissioners in India when Mr. Macaulay was President of that body, being now under the consideration and revisal of the Legislative Council of India, with a view to its being enacted; we have not collectively made it a particular subject of our examination and consideration farther than was necessary in order that we might be able to frame in such a manner as to suit it the Code of Criminal Procedure which we submitted in our First Report. But we think it right to state, that we regard those two Codes as the means of remedying the evils of the existing state of things in India with respect to Criminal Law.

It remains for us to treat of the wants of India in respect of substantive Civil Law. The Law Commissioners in India made a very elaborate Report, dated 31st October 1840, to the Governor General in Council bearing on this subject, and containing a full disquisition on the question, whether the law of England ought not, on general principles, to have been held to be the *Lex Loci* of the British possessions in India from the time of their acquisition, as well as a statement of the views of the Commissioners as to the legislation which was required in regard to this matter under the circumstances of the period at which they wrote. From that Report and the various papers connected with it, all of which we have carefully examined and considered, we have obtained much information. We think it unnecessary, however, now to revive the retrospective question discussed by the Commissioners in India. We regard as far more important a conclusion respecting the present state of the laws of India at which they arrived on unquestionable grounds. It is this, that beyond the limits of the capital towns of the three Presidencies, there is not in actual operation any *Lex Loci*, any substantive Civil Law for the various classes of persons who have not, like the main portions of the population, namely, the Hindoos and Mahomedans, special laws of their own which our judicatures are required to enforce. This is a great want, which ought to be supplied. It is, however, a want which, in our opinion, is merged in another want, larger and not less urgent, and can best be supplied by a measure adapted to meet the whole of the actual emergency.

The Supreme Courts established by Royal Charters administer, within the limits of the capital towns, to Europeans and others not Hindoos or Mahomedans, the substantive Civil Law of England subject to certain exceptions and qualifications, which we need not particularize. That law therefore may correctly be regarded as within those limits an actual *Lex Loci*. From this arises a great difference between the state of the Capitals and that of the Pro vinces in respect of law. There is a further difference, which affects even the transactions of Hindoos and Mahomedans among themselves, arising from the different terms in which the kinds of cases to be decided by the special laws of the Mahomedans and Hindoos are described by legislative authority, for the guidance of those Supreme Courts and for that of the Courts of Justice in the provinces. The whole difference, consequently, between the state of the law at the Capitals and the state of the law in the Provinces is very great. This is manifestly an evil of no small importance. It cannot but produce much inconvenience even now; and if it were allowed to continue after the proposed union of the Supreme Courts and the Sudder Courts shall have been effected, the inconvenience, we think, would greatly increase. The anomalous state of the law, when one High Court presided over the whole administration of justice, both at the Capital and in the Provinces, would be more striking and more insufferable.

In the present state of the population of India, it is necessary to allow certain great classes of persons to have special laws, recognized and enforced by our Courts of Justice, with respect to certain kinds of transactions among themselves. But we think that it is neither necessary nor expedient that, for any persons, the law should vary according as they reside within or beyond the boundary of the Capital.

We have given our attentive and anxious consideration to the means of remedying the great defects in the state of the laws in India to which we have now adverted; and we have arrived at the conclusion that what India wants is a body of substantive Civil Law, in preparing which the law of England should be used as a basis; but which, once enacted, should itself be the Law of India on the subjects it embraced. The framing of such a body of law, though a very arduous undertaking, would be less laborious than to make a digest of the law of England on those subjects, as it would not be necessary to go through the mass of reported decisions in which much of English law is contained. And such a body of law, prepared as it ought to be with a constant regard to the condition and institutions of India, and the character, religions, and usages of the population, would, we are convinced, be of great benefit to that country.

Being designed to be the law of India on the subjects it embraces, this body of law should govern all classes of persons in India, except in cases excluded from the operation of its rules by express provisions of law. Not only must there, however, be large exceptions in respect of amenability to this body of law, but there are important subjects of Civil Law which we think it would not be advisable that it should embrace. It would be premature to attempt now to define either the exceptions or exclusions.

We see no reason, however, why, on very many important subjects of Civil Law—we shall only name one, contracts, as an example—such law cannot be prepared and enacted as will be no less applicable to the transactions of Hindoos and Mahomedans, by far the most numerous portions of the population, than to the rest of the inhabitants of India.

If on any subject embraced in the new body of law it should be deemed necessary that for a particular class of persons or for a particular district or place there should be law different from the general law, and if there shall be no particular and cogent objection to the insertion of such special law into the proposed body of law, such special law, we think, ought to be provided in that way. But it is our opinion that no portion either of the Mahomedan law or of the Hindoo law ought to be enacted as such in any form by a British Legislature. Such legislation, we think, might tend to obstruct rather than to promote the gradual progress of improvement in the

state of the population. It is open to another objection too, which seems to us decisive. The Hindoo Law and the Mahomedan Law derive their authority respectively from the Hindoo and the Mahomedan religion. It follows that, as a British Legislature cannot make Mahomedan or Hindoo religion, so neither can it make Mahomedan or Hindoo law. A Code of Mahomedan law, or a digest of any part of that law, if it were enacted as such by the Legislative Council of India, would not be entitled to be regarded by Mahomedans as very law itself, but merely as an exposition of law, which possibly might be incorrect. We think it clear that it is not advisable to make any enactment which would stand on such a footing.

We have the satisfaction of being able to state that our opinions as to the defects in the state of the substantive Civil Law in India, and the expediency of framing and enacting a body of law for India based upon English Law, are very much in accordance with the views of the Law Commissioners in India.

We take this opportunity to report that a Petition from the merchants, traders, and residents of Singapore, for the appointment of a Resident Professional Judge, having been referred to us by the Commissioners for the Affairs of India, we carefully examined and considered that subject, and communicated our opinion thereon to the said Commissioners.*

We humbly submit this our Second Report to Your Majesty's Royal consideration.

JOHN ROMILLY. (L.S.)
EDWARD RYAN. (L.S.)
C. H. CAMERON. (L.S.)
JOHN M. MACLEOD. (L.S.)
T. F. ELLIS. (L.S.)

Dated the 13th day of December 1855.

We dissent from the above Report for the reasons stated in our joint Minute.†

JOHN JERVIS.
ROBERT LOWE.

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* See Appendix B.

† See Appendix A.

APPENDIX

APPENDIX A.

MINUTE by the LORD CHIEF JUSTICE of the COMMON PLEAS and the Right Honourable ROBERT LOWE.

We dissent from this Report.

The proposition, as we understand it, is, that whereas beyond the limits of the presidency towns there is no *lex loci* at all, this state of things is to be perpetuated until a complete code for India be framed, based indeed upon the English law, but every provision of which is subject to be reconsidered and remodelled, not only with reference to the customs and prejudices of the natives, but also to the principles of what may appear to the Commissioners the most enlightened jurisprudence.

We do not doubt that such a work, if ever it shall be accomplished, will be of great benefit to India, but it is certainly one of no ordinary difficulty and delicacy. It must be at once adapted to the highly artificial state of society of the Presidency towns, and to the comparatively rude and primitive communities of the mofussil. We cannot admit the necessity of keeping India without any *lex loci* at all till this gigantic task shall have been performed, unless there be no alternative.

Such an alternative, we think, exists. The English law, up to 1726, is already administered in the Presidency towns, and we cannot understand why it should not be extended, so far as it is applicable, to the mofussil. The introduction of a *lex loci* would be thus made easy and speedy; and the time of the Commissioners would be taken up, not in passing over the whole field of substantive law, but only such parts of it as it might be necessary to alter or exclude in order to adapt them to the exigencies of a country like India. It is thus that law is imported into our colonies; and imperfect as the system may be in theory, every one acquainted with it knows that it works exceedingly well. No doubt the law would require much more alteration to make it apply to India than to a British colony, but the difference between the two cases appears to us to be of degree rather than of kind.

It may be said that though this might work in the Presidency towns, the native moonsiff or sudder ameen, and the vakeels who practise before them, having no access to reports, and no profound legal knowledge, would be unable to administer English law in the manner in which it is administered by English lawyers. This is quite true, but we fear will apply nearly as much to one system as to the other. If the proposed code be really worthy of the name, it will be at once too cumbrous and too minute for the use of mofussil judges; and a brief abstract of rules and principles, prepared under the authority of Government, must be circulated for their use. The same thing can be done if we adopt the law of England as it stands, the only difference being, that we shall not have the trouble and delay of making a code which when made will be too complicated for the people for whom it is designed.

It may be said, that the plan of the Commissioners and the plan which we suggest are not incompatible, and that there is no reason why English law should not be introduced at once, to be superseded by the code as soon as it is prepared. But this would be only making one innovation in order to efface it by another. It is a very different thing to introduce the law of England as it stands from adopting only so much of the law of England as, after careful examination, the Commission might think fit to re-enact. The questions of the validity of promises without consideration, of requiring certain contracts to be in writing, and of the attestation of wills, might easily be decided in different ways in the two codes. The reproach that has been brought on the English law has principally arisen from its technical procedure and divided jurisdictions. The substantive law has also its faults; but it is a system which can be worked, and, being sufficient for us and our colonies, would, we think, be a great boon to a country in which it is hardly an exaggeration to say there is no law at all. For these reasons we cannot bring ourselves to consent to the postponement of an immediate and practical good so greatly needed, until the proposed substantive law of India shall have been elaborated.

JOHN JERVIS.
ROBERT LOWE.

APPENDIX B.

Sir, India Board, 26th October 1855.

The Commissioners for the Affairs of India having determined to refer the petition from the merchants, traders, and residents of Singapore for the appointment of a resident professional judge for the consideration of the Indian Law Commission, under sect. 29. of the recent Act for the Government of India, I am directed to request you to bring the petition before the Commissioners, for their report and opinion.

I am, &c.

To J. A. Hawkins, Esquire, &c. &c. &c.

T. N. Redington.

The Petition of the undersigned Merchants, Traders, and other residents at Singapore, in the Straits of Malacca,

Humbly sheweth,

1. That in the year A.D. 1807 His Majesty George the Third was graciously pleased to grant a royal charter establishing the Court of Judicature of Prince of Wales' Island, and that His late Majesty was also pleased to appoint a recorder to administer justice, with the assistance of the heads of the executive authority acting as lay judges.

2. That at the time when the said charter was framed the resident population of Prince of Wales' Island was stimated at only fourteen thousand; that the judicial machinery of the Court, although at that time adequate to the then existing circumstances of the place, the increase of the population and trade, and necessarily an augmentation of judicial duties, was not followed by any addition to the Court establishment; on the contrary, the duties of the recorder were more than doubled in A.D. 1827 by the existing charter of the Court, which extended the jurisdiction of the Court established at Prince of Wales' Island to Singapore and Malacca,—the said several places, Prince of Wales' Island, Singapore, and Malacca, being each separated by sea from the other of them by a distance of nearly two hundred miles,—compelling the recorder to make periodical visits at each station, instead of residing at Prince of Wales' Island, as theretofore.

3. That under a free-trade policy and liberal government, aided by no adventitious circumstances or the discovery of vast mineral wealth, the United Settlement of Prince of Wales' Island, Singapore, and Malacca—but Singapore especially—has attained an unexampled position of prosperity, as a reference to the statistical abstract in the margin, derived from official sources, will abundantly prove. From the marginal abstract it will be seen that, since the establishment of the court of judicature at Prince of Wales' Island, the resident population has increased more than sixteen fold, whilst the value of the import and export trade since A.D. 1826 (the date of the existing charter of the court) has nearly doubled itself,—the resident inhabitants comprising Europeans, Eurasians, Armenians, Jews, Parsees, Chinese, Malays, natives of British Continental India, Javanese, Cochin-Chinese, Singhalese, Siamese, and other natives of the Archipelago, all speaking different languages and professing various creeds.

Population of P. W. Island in 1807—14,000.

In the year 1810.		*Value of Trade.*	
Population of P. W. Island -	27,968	Imports £	516,403
" Province Wellesley	3,692	Exports £	590,521
	31,660	£	1,106,924
In the year 1826-27.		*Value of Trade.*	
Population of P. W. Island -	37,342	Imports £	547,312
" Province Wellesley	18,042	Exports £	567,302
Population of Singapore -	12,907	Imports £	1,452.773
		Exports £	1,480.904
Population of Malacca - -	33,162	Imports £	138,153
		Exports £	97,936
Total population of the United Settlement	101,453	£	4,284,390
In the year 1852-53.		*Value of Trade.*	
Population of P. W. Island (1850-51) -	67,953	Imports £	577,106
" Province Wellesley (1850-51) Being the last census.	48,143	Exports £	782,583
Population of Singapore (1850-51) - - Being the last census.	59,043	Imports £	3,226,023
		Exports £	2,788,074
Population of Malacca (1847) - - Being the last census.	54,905	Imports £	78,926
		Exports £	63,843
Total population of the United Settlement	225,044	£	7,516,558

N.B. The intermediate Trade of the three stations for the year 1852-53 was £1,202,992, which amount is not included in the above statement.

4. That the increased population and trade of the Straits Settlement has not only greatly augmented the duties of the recorder or professional judge; the executive functions of the lay judges of the court have proportionably increased, and have become so multifarious as almost wholly to engross their time and attention. The general administration of justice devolves on the recorder, whose visit, on circuit, to one of the stations, causes a temporary suspension for several months of all judicial business at the other station. That your petitioners desire to press upon the attention of your Lordships that the absence of a legal education not only disqualifies the lay judges to adjudicate in cases involving questions purely of law, or partly law and partly fact, that there is sometimes a clashing between their judicial and executive functions which necessarily obliges suitors either to

wait for months the arrival of the recorder on circuit, to abandon their suit altogether, or to place the lay judge, if disposed to officiate, in the anomalous position of adjudicating cases where the executive is more or less interested in the result.

5. That your petitioners call the attention of your Lordships to the fact that the recorder, (by the provisions of the statute 11 Victoria, cap. XXI.) being the sole judge of the Court for the Relief of Insolvent Debtors, the operation of that humane measure is necessarily limited, and its working and influence so restrictively confined as in a great degree to frustrate the intentions of the legislature, whilst during the judge's absence from the other stations in the settlement every facility is afforded and availed of by fraudulent debtors to conceal, make away with, and place their property beyond the jurisdiction of the Court, to the great injury of creditors.

6. That your petitioners respe tfully urge upon the attention of your Lordships the present position and growing importance of Singapore, and the necessity which exists for the appointment of a resident professional judge. In addition to the permanent population, numbering sixty thousand, more than fifty thousand persons annually visit the port for tradal purposes, arriving in the fair monsoon and departing before the adverse monsoon sets in; that the length of time intervening the honourable the recorder's return on circuit operates prejudicially in the administration of justice in criminal cases, owing to the departure of witnesses, who in many instances arrive here for commercial purposes, and who depart before the sessions of Oyer and Terminer take place.

7. That for many years the ordinary judicial business of the Court at Prince of Wales' Island and at Malacca has been and continues to be wholly suspended (except when the recorder is present), and no processes are issued during his absence; whilst at Singapore, during the absence of the recorder on circuit, the urgent and ordinary duties of the Court have been and are conducted by the resident councillor, the Honourable Mr. Church; that notwithstanding the high opinion and respect entertained by your petitioners for the integrity, talent, and zeal uniformly exercised by the present resident councillor, the increasing duties of that functionary in his executive capacity necessarily encroach on and must at an early period deprive your petitioners of his valuable services in disposing of the judicial business of the Court. Moreover, as the performance of these judicial duties is honorary, their exercise is not only uncertain, but obviously depend on the will, convenience, and possible fitness of the resident councillor.

8. That your petitioners respectfully call the attention of your Lordships to the existing provision in cases of appeal. An appeal is allowed from the Court of Judicature to Her Majesty's Most Honourable Privy Council only when the amount of the suit is ten thousand rupees and upwards. In newly-formed settlements property is usually of a moveable description and of moderate value. As civil and equity suits are instituted chiefly for amounts far under the above-named sum, the limitation acts as a bar to an appeal. No appeal from the Straits has been prosecuted before Her Majesty's Most Honourable Privy Council, principally for the reason assigned by your petitioners, who respectfully submit that an appeal is not only a matter of right where suitors feel aggrieved by a judicial decision, and where reasonable grounds exist, but that substantial justice requires such a course; your petitioners therefore beg humbly to suggest to your Lordships, that a tribunal having an appellate jurisdiction in cases involving sums above five hundred dollars might be so framed as to meet the wants of your petitioners; and further, your petitioners are of opinion that your Lordships will confer lasting benefits upon all British subjects in the Straits of Malacca by your Lordships recommending the organization of an appeal tribunal at Calcutta, with the privilege of a final appeal to Her Majesty's Most Honourable Privy Council in cases where the amount of the suit is five thousand rupees and upwards. The similarity of religion, habits, manners, and customs of the people of the Straits of Malacca and Bengal suggests an additional advantage in establishing the court of appellate jurisdiction prayed for.

9. That by the existing charter of the Court of Judicature, the licensed practitioners o the said Court may at any time be silenced on the mere motion of the recorder or lay judge who, "either assigning a reason [or] without assigning any reason whatever," may withdraw or vacate the licence of any and every practitioner, without reference to the convenience o suitors or justice to the practitioners, and without affording them an opportunity of being heard in defence; —a measure repugnant to the liberty of counsel, and subversive of that spirit of independence, integrity, and constitutional bearing characteristic of the bar, essentially necessary to the profession, and the due administration of justice in all courts of judicature.

10. That the greater portion of the civil causes heard and disposed of in the said Court of Judicature involve questions of fact which elsewhere are ascertained and determined by a jury selected from the most respectable and intelligent part of the community, whose local experience and knowledge of the manners, customs, observances, and course of procedure amongst all classes of the community eminently qualify them to judge of and resolve matters of fact. By the existing charter of the Court the bench is embarrassed by having to perform the part of a jury as well as act as a judge in all civil cases.

11. **That your petitioners have, on various occasions during the past ten years, petitioned the Supreme Government of India on one or more of these momentous subjects; they have also petitioned the Board of Control for the Affairs of India, and likewise memorialized the Court of Directors of the East India Company; but hitherto without effect. The petitions and memorials, although forwarded through the authorized channel, the local government, have not even been acknowledged by the authorities to whom they were respectively addressed.**

That the whole question of judicial legislation for India having been referred by both Houses of Parliament to the consideration of a Commission, your petitioners most humbly and most earnestly pray that your Lordships will give your favourable attention to the prayer of this petition, which is, that a resident professional judge be appointed, that the independence of practitioners of the Court be secured, that a Court of Appeal be established, and that a jury of three or five disinterested and qualified persons may sit and act and determine questions of fact arising on the trial of civil causes.

And your petitioners will ever pray.

M. F. Davidson,
C. H. Harrison,
H. J. Marshall,
&c. &c. &c.

Singapore, 14th March 1854.

Indian Law Commission, 19, New Street, Spring Gardens,
26th January 1855.

Sir,

I am directed by the Indian Law Commissioners to acknowledge the receipt of your letter of the 26th of October last, referring to them, for their report and opinion, a petition from merchants, traders, and other residents at Singapore, for the appointment of a resident Professional Judge. The Commissioners having had that petition under their consideration, direct me to convey to you the following observations, for the information of the Commissioners for the Affairs of India.

It appears to the Indian Law Commissioners to be beyond doubt that in consequence of the great increase of population and trade at Prince of Wales' Island and Singapore, a single professional judge, dividing his time and services among those two settlements and Malacca, is not sufficient to meet the wants and wishes of their inhabitants.

The Commissioners think that the prayer of the Singapore petitioners for the appointment of a resident judge at that settlement is reasonable, and ought to be granted; but inasmuch as Malacca is much nearer to Singapore than it is to Prince of Wales' Island, the Commissioners think that the resident professional judge to be appointed for Singapore should make periodical circuits to Malacca, instead of the resident professional judge at Prince of Wales' Island.

They would recommend that the selection of persons to fill these offices should be required by law to be made from members of the English or Irish bars of not less than five years' standing, or advocates of the Supreme Courts in Scotland of the same standing. They also recommend that a salary of 2,500*l.* a year be assigned to the Judge of Singapore and Malacca, and a salary of 2,000*l.* a year to the Judge of Prince of Wales' Island, the excess of the former over the latter being intended to compensate the Judge of Singapore and Malacca for the expense of his circuits to the last-mentioned place; and further, that a pension of 700*l.* a year be allowed to each of these judges after a service of twelve years.

The Commissioners are of opinion that the plans of procedure, civil and criminal, which they are preparing for Bengal, will, with some modifications as to details, be applicable at the several settlements in the Straits.

They contemplate that the proposed Courts of Justice at those settlements shall have the same jurisdiction in all cases, civil and criminal, as it is intended that the Judges of the High Court to be established at Calcutta shall have; that is to say, jurisdiction in all cases, civil and criminal, excepting such cases as it may be thought fit to confide to Courts of Requests and Magistrates; and that in civil cases an appeal shall lie from the new courts to the High Court at Calcutta, acting in its appellate capacity, in like manner as an appeal will lie to that Court from the Judges of the High Court exercising original jurisdiction. A further and final appeal will of course lie to the Privy Council in cases where the amount or value litigated exceeds a certain sum.

In this way it appears to the Commissioners that the wishes of the petitioners on the subject of appeals will be met as fully as possible.

With regard to the wishes expressed in the petition, for the independence of the bar, and for trial by jury in civil cases, the Commissioners think that the law upon these points should be the same at the Straits Settlements as at Calcutta; and they do not intend to recommend trial by jury in civil cases.

The Commissioners think that all the necessary measures for the better administration of justice at the settlements in the Straits may be effected without any new Act of Parliament.

With the sanction of the Crown, and of the Court of Directors acting under the direction and control of the India Board, it will be competent to the local legislature of India to enact whatever law may be required for the purpose, except that the new Courts will not have the Admiralty jurisdiction now exercised by the Recorder's Court, unless provision for the same be made either by the Crown or the Imperial Legislature.

I have, &c.

J. HAWKINS, Secretary.

To Sir Thomas Redington, K.C.B.,
India Board.

LONDON:
Printed by George E. Eyre and William Spottiswoode,
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For Her Majesty's Stationery Office.

THIRD REPORT

OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO CONSIDER THE REFORM

OF THE

JUDICIAL ESTABLISHMENTS, JUDICIAL PROCEDURE, AND LAWS

OF

INDIA,

&c.

Presented to both Houses of Parliament by Command of Her Majesty.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.
1856.

CONTENTS.

COMMISSION.

L.S.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John M'Pherson Macleod, Esquire, John Abraham Francis Hawkins, Esquire, Thomas Flower Ellis, Esquire, and Robert Lowe, Esquire, Barrister-at-Law, Greeting:

Whereas by an Act passed in the Sixteenth and Seventeenth Years of Our Reign, reciting " That whereas by an Act of the Third and Fourth Years " of King William the Fourth it was provided that Commissioners to be " appointed thereunder, and to be styled the Indian Law Commissioners, " should inquire into the Jurisdiction, Powers, and Rules of the existing Courts " of Justice and Police Establishments in the Territories in the Possession and " under the Government of the East India Company, and all existing Forms " of Judicial Procedure, and into the Nature and Operation of all Laws, " whether civil or criminal, written or customary, prevailing and in force in any " Part of the said Territories, and should from Time to Time make Reports, " in which they should fully set forth the Result of their Inquiries, and should " from Time to Time suggest such Alterations as might, in their Opinion, be " beneficially made in the said Courts of Justice and Police Establishments, " Forms of Judicial Procedure and Laws, due Regard being had to the Dis- " tinction of Castes, Difference of Religion, and the Manners and Opinions " prevailing among different Races and in different Parts of the said Territories;" and reciting, " That whereas the Indian Law Commissioners from Time to " Time appointed under the said Act have, in a Series of Reports, recommended " extensive Alterations in the Judicial Establishments, Judicial Procedure, and " Laws established and in force in India, and have set forth in detail the " Provisions which they have proposed to be established by Law for giving " effect to certain of their Recommendations, and such Reports have been " transmitted from Time to Time to the said Court of Directors; but on the " greater Part of such Reports and Recommendations no final Decision has " been had;" it is among other things enacted, that it shall be lawful for Her Majesty at any Time after the passing of the Act, by Commission under the Royal Sign Manual, to appoint such and so many Persons in England as to Her Majesty may seem fit to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them.

Now know ye, therefore, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John M'Pherson Macleod, John Abraham Francis Hawkins, Thomas Flower Ellis, and Robert Lowe, or any Three or more of you, to make a diligent and full Inquiry into and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. And We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons, as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company. And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved Frederick Millett, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Twenty-ninth Day of November 1853, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,
(Signed) PALMERSTON.

COMMISSION.

L. S.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John Macpherson Macleod, Esquire, Thomas Flower Ellis, Esquire, Robert Lowe, Esquire, Barrister-at-Law, and Frederic Millett, Esquire, Greeting:

Whereas We did, by Warrant under Our Royal Sign Manual bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, appoint you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, and Robert Lowe, together with Our trusty and well-beloved John Abraham Francis Hawkins, to be Our Commissioners to examine and consider the Recommendations of the Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as might by or with the Sanction of the Commissioners for the Affairs of India be referred to you for Consideration.

Now know ye, that We have revoked and determined, and do by these Presents revoke and determine the said Warrant bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, and every Matter and Thing therein contained. **And** We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, Robert Lowe, and Frederic Millett, or any Three or more of you, to make a diligent and full Inquiry into, and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. **And** We do by these Presents give and grant unto you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company.

And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We kave made choice of Our trusty and well-beloved John Abraham Francis Hawkins, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Seventeenth Day of March 1854, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,

(Signed) PALMERSTON.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

We, Your Majesty's Commissioners appointed to examine and consider the recommendations of the Indian Law Commissioners who were employed in India, and the enactments proposed by them for the reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other matters in relation to the reform of the said Judicial Establishments, Judicial Procedure, and Laws as might, by or with the sanction of the Commissioners for the Affairs of India, be referred to us, have prepared and submitted to Your Majesty in our First Report a plan for the amalgamation of the Supreme and Sudder Courts at Calcutta, as well as a simple and uniform Code of Civil and Criminal Procedure applicable both to the High Court so formed and to all inferior Courts within the limits of its jurisdiction.

In the remarks we then made introductory to the plan which we recommended for the amalgamation of the Supreme and Sudder Courts at Calcutta, we intimated that the subsequent extension of the measure to the other Presidencies of India would be comparatively an easy task.

Since the submission of our First Report we have been instructed by the Commissioners for the Affairs of India to apply ourselves to the preparation of a similar Report for the Presidencies of Madras and Bombay. We are accordingly preparing such a Report; but as the Report which we have submitted does not embrace the North-western Provinces of the Presidency of Bengal, we now submit the plan we propose for those Provinces, in order to bring them under a system of judicature and procedure uniform, as far as the difference of circumstances will permit, with the system recommended by us for the Lower Provinces of the same Presidency.

There is at Agra, as at Calcutta, a Court of Sudder Dewanny Adawlut and Sudder Nizamut Adawlut, but no Supreme Court. The Supreme Court at Calcutta, however, possesses the same jurisdiction over the North-western Provinces as it possesses over the Lower Provinces of the Bengal Presidency.

We propose to abolish the Sudder Court at Agra, and to establish a High Court exercising the powers and jurisdiction of that Sudder Court, as well as those which the Calcutta Supreme Court has with respect to the North-western Provinces.

The same majority of the Commissioners which agreed in recommending that the High Court at Calcutta should be constituted in the manner proposed in our First Report think that the High Court to be established at Agra should also be constituted in that manner, except only as regards the number of Judges.

It is recommended by that majority that the High Court at Agra shall never consist of less than four members, of whom one shall be appointed by the Crown, and the rest by the Governor General in Council; and that the Judges shall be selected from the same classes as in the case of the High Court of Calcutta.

We are of opinion it is desirable that the Judges of the High Court should not only be judges of appeal, but also judges of original jurisdiction. This object will be readily effected at Calcutta by the transfer to the High Court of the original jurisdiction exercised by the Supreme Court in the town of Calcutta in the manner we have recommended in our First Report. At Agra the Courts of original civil jurisdiction are those of the Judge and Principal Sudder Ameen of the district of Agra, and that of the Moonsiff of the town of Agra. We propose to give to the High Court original jurisdiction locally co-extensive with that of the Moonsiff of the town, to the exclusion, within the same limits, of the jurisdiction now exercised by the Judge and Principal Sudder Ameen, so that the High Court and the Court of the Moonsiff will be the only Courts of original jurisdiction, and the High Court the only Court of appellate juris-

diction within the local limits of the Moonsiff's jurisdiction. In like manner we propose to exclude, on the criminal side, the jurisdiction now exercised by the Session Judge of the district of Agra within the town of Agra, and to provide that all offences within the limits of the town, except those punishable upon summary conviction, shall be tried by the High Court.

The only other point to which we think it necessary to make special reference is that of trial by jury. We propose that all trials before the High Court in the exercise of its original criminal jurisdiction shall be by jury; but whereas we have recommended that at Calcutta the number of the jury shall never be less than nine, we propose, with advertence to the probable difficulty of procuring at Agra so large a number of jurors as nine, to apply there the rule we have suggested with respect to trials by jury in the Lower Provinces at other places than the presidency town, that is to say, that the jury shall consist of not less than three nor more than nine persons.

In all other respects the system of Courts and the Civil and Criminal Procedure we recommend for the North-western Provinces are the same as those we have recommended for the Lower Provinces of the Bengal Presidency.

For our views on various points, as well as for information in regard to the existing systems of Judicature and Procedure in the Presidency of Bengal, we beg to refer to the notes and appendices of our First Report, which we consider it unnecessary to add to our present Report.

High Court.

I.

There shall be one High Court of Judicature at Agra.

Institution of the High Court.

II.

Such Court shall consist of not less than four Judges, of whom one shall be appointed by the Crown, and the remainder by the Governor General in Council; and one of such Judges shall be appointed Chief Justice by the Crown.

Constitution of the High Court.

The Judge to be appointed by the Crown shall be selected from barristers of England and Ireland, and from members of the Faculty of Advocates in Scotland, of not less than five years standing.

The Judges to be appointed by the Governor General in Council shall be selected from,—

1st. Members of the Covenanted Civil Service of ten years standing; or,

2d. Barristers of England and Ireland, and members of the Faculty of Advocates in Scotland, who shall have been admitted as barristers and advocates of the Supreme Court or of the High Court in India for a period of not less than five years; whether practising at the bar, or being officers of the Court, or holding office under the Government; or,

3d. Persons who have been in the uncovenanted Judicial Service of the Government for a period of ten years; or,

4th. Persons who have been vakeels for a period of ten years; or

5th. Persons who shall have acted in the two last-mentioned capacities for periods amounting together to not less than ten years.

III.

Every vacancy happening in the office of the Judge who shall have been appointed by the Crown shall be filled up by the Crown, and every vacancy in the office of any Judge appointed by the Governor General in Council shall be filled up by the Governor General in Council.

Vacancies how to be filled up.

IV.

The Judges of the High Court shall hold their offices during the pleasure of the Crown. It shall, however, be competent to the Governor General in Council to direct the suspension of any Judge of the High Court until the pleasure of the Crown be known.

Judges to hold Office during pleasure of the Crown. Governor General in Council may suspend.

V.

Every Judge of the High Court, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:—

Declaration on entering upon office.

"I, *A.B.*, appointed a Judge of the High Court at Agra, do solemnly "declare that I will faithfully perform the duties of my office to the "best of my ability, knowledge, and judgment."

VI.

The High Court shall use a seal such as shall be prescribed by the Governor General in Council.

Seal.

VII.

The High Court shall prepare and submit for the approval of the Governor General in Council, a statement of such establishment of ministerial officers as may be necessary for the due execution of all the powers and authorities committed to it, exhibiting in detail the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such further particulars as the Governor General in Council may require. When

Ministerial officers.

such statement has been approved by the Governor General in Council, the High Court shall proceed to make the appointments to the several offices.

VIII.

Powers of the High Court in making rules of practice, and framing forms, &c. for the High Court;

The High Court shall have power to make all the general rules for the due exercise of the civil and criminal jurisdiction vested in that Court, and also to frame forms for every proceeding in the said Court for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Court; provided that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are carried into effect, have received the sanction of the Governor General in Council.

IX.

in admitting advocates, vakeels, and attorneys;

The High Court shall be empowered to approve, admit, and enrol such and so many advocates as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and plead for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many vakeels as to the said High Court shall seem meet, who shall be and are hereby authorized to appear, plead, and act for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many attorneys-at-law as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and act for the suitors of the said High Court.

X.

in making rules for the qualifications, &c. of advocates, vakeels, and attorneys.

The High Court shall have power to make rules for the qualification and admission of proper persons to be advocates, vakeels, or attorneys-at-law of the said High Court, and shall be empowered to remove, on reasonable cause, the said advocates, vakeels, or attorneys-at-law; and no person or persons whatsoever but such advocates, vakeels, or attorneys-at-law shall be allowed to appear for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such advocates or vakeels shall be allowed to plead for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such vakeels or attorneys-at-law shall be allowed to act in any other respect than as herein-before mentioned, for any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction.

XI.

Appellate jurisdiction.

The High Court shall have all the appellate jurisdiction now exercised by the Sudder Dewanny Adawlut of Agra, and a new appellate jurisdiction from the Judges of the High Court exercising original jurisdiction as herein-after provided.

XII.

High Court to superintend all Civil Courts.

The High Court shall have superintendence over all the Courts of civil judicature subject to its appellate jurisdiction, with power to call for returns, and to direct the transfer of any civil suit or appeal from any Court to any other Court of equal or superior jurisdiction.

XIII.

Powers of the High Court in making rules of practice, and framing forms, &c. for the subordinate Civil Courts.

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the subordinate Civil Courts, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall

be used and observed in the said Courts; provided that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction of the Governor General in Council.

XIV.

The High Court shall have original civil jurisdiction locally co-extensive with that of the Moonsiff of Agra; provided that it shall be in the power of the Governor General in Council, from time to time, to extend the local limits of such jurisdiction as he shall think fit. Local limits of original jurisdiction.

XV.

The High Court shall have within the territories subject to its appellate jurisdiction the like civil jurisdiction as that now possessed by the Supreme Court at Calcutta as a Court of Ecclesiastical Jurisdiction, and as a Court for the Relief of Insolvent Debtors. Ecclesiastical and insolvency jurisdictions.

XVI.

The High Court shall have the like jurisdiction as that now possessed by the Supreme Court at Calcutta in suits againt the East India Company. Jurisdiction in suits against the East India Company.

XVII.

The High Court, in the exercise of its original jurisdiction, shall be empowered to receive, try, and determine suits of every description, provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant at the time when the suit may be commenced shall dwell, or carry on business, or work for gain, within the local limits of the ordinary original jurisdiction of the said Court, except that it shall not have any jurisdiction in cases in which the debt, or damage, or value of the property sued for, does not exceed five hundred rupees. Original jurisdiction as to suits.

It has been proposed in our First Report that the jurisdiction of the High Court to be established at Calcutta shall extend to all causes except those in which the value of the matter in dispute does not exceed 100 rupees, and which fall within the jurisdiction of the Small Cause Court. The jurisdiction of the Small Cause Court extends to 500 rupees, and there is no appeal of right from its decisions. If our recommendations with respect to the pecuniary jurisdiction of the Mofussil Courts are adopted, the jurisdiction of the Moonsiff of Agra, in common with that of all other Moonsiffs, will be extended to 2,500 rupees, and there will be an appeal from his decisions to the High Court, except in cases of the most simple kind, in which the sum in dispute does not exceed 50 rupees. We accordingly propose that the concurrent jurisdiction of the High Court and of the Moonsiff at Agra shall commence at 500 rupees.

XVIII.

No suit in the High Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief. Declaratory suit.

XIX.

The High Court shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim. High Court not to entertain original suits already heard and determined.

XX.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of the High Court. No person excepted from jurisdiction by reason of place of birth, or of descent.

XXI.

More than one Court of appellate or original jurisdiction constituted by Judges of the High Court may be sitting at the same time. More than one Court may be sitting at the same time.

XXII.

The Chief Justice shall from time to time determine what and how many Judges of the Court, whether with or without the Chief Justice, shall constitute Courts of Appeal; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts of original jurisdiction. Courts of appellate and original jurisdiction, how to be constituted.

XXIII.

Appeal from the High Court of original jurisdiction to the High Court in its appellate jurisdiction.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more Judges of the High Court to one of the Appellate Courts constituted by Judges of the High Court.

XXIV.

An appeal shall lie to the High Court from the Moonsiff of Agra in all cases in which an appeal shall be allowed by the Code of Civil Procedure.

XXV.

Judges may be sent on special commission.

The Judges of the High Court may be sent into the Mofussil on special commission by the Governor General in Council.

Criminal Jurisdiction.

XXVI.

High Court to exercise powers of Sudder Nizamut Adawlut.

The High Court shall have all the jurisdiction now exercised by the Sudder Nizamut Adawlut of Agra as a Court of Appeal, and also as a Court for the hearing of cases referred by the Session Judges, and for the revision of cases tried by the criminal Courts

XXVII.

High Court to superintend subordinate criminal Courts.

The High Court shall have superintendence over all the Courts of criminal judicature subject to its appellate jurisdiction, and over all criminal Courts subordinate to such Courts, with power to call for returns, and to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

XXVIII.

Powers of the High Court in making rules of practice and framing forms for the subordinate criminal Courts.

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the criminal Courts subject to its superintendence, and also to frame forms for every proceeding in the said Courts for which it shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Courts; provided, that such rules and forms be not inconsistent with the provisions of any law in force; and shall, before they are issued, have received the sanction of the Governor General in Council.

XXIX.

Local limits of original jurisdiction.

The High Court shall have original criminal jurisdiction within the local limits of its original jurisdiction.

XXX.

Jurisdiction as to persons in Agra.

The High Court, in the exercise of its local original jurisdiction, shall be empowered to try all persons brought before it on charges preferred by the Advocate General of the Bengal Presidency, or by the Magistrate of Agra, or by any private person who shall have first obtained leave of the Court for that purpose.

XXXI.

As to persons within its general jurisdiction.

The High Court shall have original criminal jurisdiction over all persons residing within the limits of its general jurisdiction, and shall have authority to try, at its discretion, any persons brought before it on charges preferred by the Advocate General of the Bengal Presidency, or by any Magistrate, or other officer specially empowered by the Government to act in this behalf, or by any private person who shall have first obtained the leave of the Court for that purpose.

XXXII.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of the High Court.

No person excepted from jurisdiction by reason of place of birth or of descent.

XXXIII.

More than one Court of appellate or original jurisdiction, or for the hearing of cases referred by the Session Judges, or for the revision of cases called for by the High Court, may be sitting at the same time.

More than one Court may be sitting at the same time.

XXXIV.

Every Court for the hearing of cases referred by the Session Judges shall consist of not less than three Judges.

Courts for hearing referred cases.

XXXV.

The Chief Justice shall, from time to time, determine what and how many Judges, whether with or without the Chief Justice, shall from time to time constitute Courts of Appeal; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts for the hearing of cases referred by the Session Judges; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts for the revision of cases called for by the High Court; and what and how many Judges, whether with or without the Chief Justice, shall constitute Courts of original criminal jurisdiction.

Courts of appellate and original jurisdiction, &c., how to be constituted, and how many.

XXXVI.

There shall be no appeal to the High Court from any sentence or order passed in any criminal trial before the Courts of original criminal jurisdiction constituted by one or more Judges of the High Court. It shall, however, be at the discretion of the Court to reserve any point of law for the opinion of the High Court.

No appeal.

Court may reserve points of law.

XXXVII.

Provided, that on its being certified by the Advocate General of the Bengal Presidency, that in his judgment there is error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which have been decided by the said Court should be further considered, the High Court shall review the case, or such part of it as may be necessary, for the purpose of determing the question or questions raised by the certificate of the Advocate General.

High Court to review on certificate of the Advocate General.

XXXVIII.

The Judges of the High Court may be sent into the Mofussil on Special Commission by the Governor General in Council.

Judges may be sent on special commission.

Power of the Government to call for Records, &c.

XXXIX.

It shall be competent to the Government to call for records, returns, and statements from the High Court, or from any other civil or criminal Court, in such form and manner as it may deem proper.

Government may call for records, &c.

Civil Courts subordinate to the High Court.

I.

Grades of district judges.

There shall be three grades of Judges in each zillah or district:—

Zillah Judges.
Principal Sudder Ameens.
Moonsiffs.

II.

Their Courts, how to be denominated.

The Courts of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be denominated after the zillah, or city, or division in which they are respectively established.

III.

Their appointment, suspension, and removal.

The appointment, suspension, and removal of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be regulated by such rules and orders as the Governor General in Council shall, from to time, pass.

IV.

Declaration on entering upon office.

Each Civil Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:

" I, *A.B.*, appointed of the Court of
" do solemnly declare that I will faithfully perform the duties of my
" office to the best of my ability, knowledge, and judgment."

V.

Seal.

Each Civil Court is to use a seal, such as shall be prescribed by the Government.

VI.

Ministerial officers.

It shall rest with the Governor General in Council, upon the report of the High Court, made after such communication with the Zillah authorities as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to the several Civil Courts; and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars as the said Governor General in Council may deem proper. Upon the receipt of the instructions of the Governor General in Council, the Judges of the Civil Courts shall make the appointments to the several offices of their respective establishments.

VII.

Civil Courts have cognizance of all suits unless specially barred,

The Civil Courts shall be empowered to take cognizance of all suits and complaints of a civil nature, with the exception of suits their cognizance of which is barred by any Act of Parliament, or by any regulation of the Bengal Code, or by any act of the Council of India.

VIII.

unless already heard and determined.

The Civil Courts shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim.

IX.

Government officers who are subject to the Civil Courts for official acts.

The Civil Courts are empowered to take cognizance of suits against collectors of the revenue and their assistants and native officers, salt agents and their assistants, and native officers concerned in the manufacture of salt, opium agents and their assistants and native officers concerned in the manufacture

of opium, collectors of the customs and their assistants and native officers employed in the collection of the customs, the mint and assay masters and their assistants and native officers, for acts done in their official capacity.

X.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts.

No Person excepted from jurisdiction by reason of place of birth or of descent.

XI.

The Moonsiffs shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts under the following pecuniary limitations; provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits to which their respective jurisdictions may extend:

Moonsiffs, their jurisdiction.

For money or other personal property not exceeding in amount or value the sum of two thousand five hundred rupees, provided the claim include the whole amount of the demand arising from the cause of action; but any plaintiff having cause of action for debt or damages above the sum of two thousand five hundred rupees may abandon the excess, and thereupon he shall, on proving his case, have a decree for an amount not exceeding such sum, and such decree shall be in full discharge of all demands in respect of such cause of action:

Pecuniary limitation.

For the property or possession of land or other real property, the computed value of which shall not exceed two thousand five hundred rupees.

XII.

If a defendant claim to set off a demand against the claim of a plaintiff to an amount in excess of the ordinary jurisdiction of the Moonsiff, the Moonsiff shall, nevertheless, have authority to try the case, and shall give judgment for the recovery of any sum which upon inquiry shall appear to be due to either party.

Jurisdiction in cases of set-off.

XIII.

The Principal Sudder Ameen shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts in which the amount claimed or the computed value of the property may exceed the sum of two thousand five hundred rupees, provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits of the district over which his jurisdiction may extend.

Principal Sudder Ameens, their jurisdiction.

XIV.

The Principal Sudder Ameen shall further exercise the same powers as the Moonsiff within the limits of the territorial division now included in the local jurisdiction of the Moonsiff fixed at the sudder or head station of the district.

To exercise the powers of Moonsiff at the Sudder station of the district.

Under this rule the Principal Sudder Ameen of the district of Agra will be ex officio Moonsiff of the town of Agra. The terms of the rule may require to be modified to meet the case of a district in which there may be more than one Principal Sudder Amen, or of a Sudder station at which there may be more than one Moonsiff. We think it expedient to leave these details to be arranged by the Legislature of India. The rule, as explained by the remarks we have made with respect to it in our First Report, indicate the course which, in our opinion, should be followed in order to render the services of the Principal Sudder Ameen available in the most efficient way, on the introduction of the system which we have recommended.

XV.

The Zillah Judge shall have concurrent original jurisdiction with that of the Principal Sudder Ameen in regard to all suits above the value of two thousand five hundred rupees; provided, however, it shall be competent to a Zillah Judge, on cause shown, to receive, try, and determine a suit within the pecuniary limitation assigned to the Moonsiff, or to direct the transfer of any suit from any Court to any other Court of equal or superior jurisdiction in his district.

Zillah Judge, original jurisdiction.

XVI.

Moonsiff's jurisdiction excluded when there is no specification of value.

The Zillah Judge and the Principal Sudder Ameen shall have concurrent jurisdiction, and the Moonsiff shall not have jurisdiction, in cases in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

XVII.

Suits for real property situate within different jurisdictions of the same Zillah.

A suit for land or other real property situate within the limits of a single Zillah, but within the jurisdiction of different Moonsiffs' Courts, may, with the previous sanction of the Judge of such Zillah, be brought in any Court within the limits of which any portion of such property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such Court.

XVIII.

Suits for real property situate in different Zillahs.

In like manner, if the property be situate within the limits of different Zillah Courts, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property in suit is situate, but in such case the Court in which the suit is brought shall apply to the High Court for authority to proceed with the same; and if the suit is brought in the Court of the Principal Sudder Ameen or Moonsiff, the application shall be submitted, through the Zillah Judge, to whom such Principal Sudder Ameen or Moonsiff is subordinate.

Suits for real property situate partly within the jurisdiction of the High Court, and partly in another jurisdiction.

If the property be situate partly within the limits of the ordinary original jurisdiction of the High Court, and partly within those of any other Court or Courts, the suit may be brought either in the High Court or in any other Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property is situate. If the suit is brought in any other Court than the High Court, application for authority to proceed with the same shall be made to the High Court, as directed in the last preceding article.

XX.

Declaratory suit.

No suit in any of the Civil Courts shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

By whom judicial decisions may be revised.

The judicial decisions of the Courts of Justice shall be subject to revision only by the constituted Courts of appellate jurisdiction, or by themselves under the rules of the code of procedure applicable to reviews of judgment.

LAW TO BE ADMINISTERED.

The Civil Courts of the North-western Provinces shall (until otherwise provided) be guided in their decisions by the laws and regulations in force at the time of the passing of this Act at the place where such Court is situate, except in so far as may be inconsistent with anything herein contained.

Proposed Code of Procedure for the Courts of Civil Judicature in the North-western Provinces of the Presidency of Bengal.

CONTENTS.*

CHAPTER I.

Preliminary Rules.

I.

No stamp duty, fee, or deposit shall be required on the institution of any civil suit, or on the entry of any appeal from the decision or order of any Civil Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Civil Court, except such fees or charges as may be set in tables to be prepared as herein-after provided. *No institution stamp, fee, or deposit.*

II.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Civil Courts comprised in any zillah by the Judge of the zillah, under the direction of the High Court, and for the High Court by the Judges thereof. And a copy of the table of fees and charges so prepared, which may be applicable to any Civil Court, shall, after the same shall have received the sanction of the Governor General in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him, than such fees or charges as may be set forth in such table. *Tables of fees and charges to be prepared.*

III.

All applications to any Civil Court, and all appearances of parties in a Civil Court, except when otherwise specially provided, may be made by

party in person, or through an Attorney or Vakeel duly authorized to act on his behalf. The authority shall in all cases be in writing, and shall be filed with the proper officer of the Court. When so filed, it shall be considered to be in full force until revoked, and the revocation shall be intimated in writing to the officer; and all notices given to, or processes served on, the Attorney or Vakeel of either party, or left at the office or ordinary residence of such Attorney or Vakeel, relative to the suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the Attorney or Vakeel represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

IV.

Party appearing in person to enter his name and address in a book.

In all cases in which a party shall appear in person, and the cause shall not be decided on the day of his appearance, he shall enter his name and place of abode in a book to be kept for that purpose by the proper officer of the Court, if his place of abode shall be within the radius of eight miles from the Court House; otherwise, he shall enter in the said book the name and place of abode of some person residing within such distance of the Court House, on whom he may wish that all notices or process in the cause should be served on his behalf. And all notices or process relative to the suit which may thereafter be left at the place so entered in the register, shall be deemed good service on the party, and shall be as effectual for purposes relative to the suit as if the same had been served on the party himself in person, unless the Court shall otherwise direct. If no such entry as aforesaid shall be made in the said register, the fixing up of such notices or process in some conspicuous place in the office of the Clerk or other proper officer of the Court, and also in some conspicuous place in the Court House, shall in like manner be deemed to be good service, and shall be as effectual for all purposes relative to the suit as if such entry had been made, and the notice or process had been left at the place so entered in the register.

V.

Native officers or soldiers who cannot obtain leave of absence may authorize any person to appear for them;

When a native officer or soldier in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending it in person, he may authorize any member of his family or any other person to conduct and manage the suit or the defence, as the case may be, in his stead. The authority shall in all cases be in writing, and shall be signed by the native officer or soldier in the presence of his commanding officer, who shall countersign the same, and it shall be filed with the proper officer of the Court. When so filed, the counter signature of the commanding officer shall be sufficient proof that the authority was duly executed, and that the native officer or soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

VI.

Who may appear personally, or appoint an Attorney or Vakeel.

Any person who may be authorized, as in the last preceding Article mentioned, by a native officer or soldier to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the native officer or soldier could do if present; or he may appoint an Attorney or Vakeel of the Court to prosecute or defend the suit on behalf of such native officer or soldier. And all notices or process relative to the suit which may be served upon any person who shall be so authorized as aforesaid by a native officer or soldier, or upon any Attorney or Vakeel who shall be appointed as aforesaid by such person to act for or on behalf of such native officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on an Attorney or Vakeel directly appointed by him.

CHAPTER II.

OF A SUIT TILL FINAL DECREE.

Of the Institution of Suits.

VII.

All suits shall be commenced by a summons to the Defendant. Suits to commence with summons.

VIII.

The application for a summons shall be made to the Clerk or other proper officer of the Court by the party in person, or through one of the Attorneys or Vakeels of the Court, duly authorized to act on his behalf, by an instrument in writing, which shall be delivered to the officer at the time of making the application. Summons how to be applied for.

IX.

The application shall be accompanied by the following particulars, distinctly written in the language in ordinary use in proceedings before the Court, viz.— Particulars to be given with the application.

1. The name, description, and place of abode of the Plaintiff.

2. The name, description, and place of abode of the Defendant, so far as they can be ascertained.

3. The relief sought for, the subject of the claim, the cause of action, and when it accrued. The following are instances:

If the suit be for money due on a bond or other written instrument:—Payment of Company's rupees due on (a bond, tumussook, hoondee, or bill of exchange, as the case may be), for the sum of Company's rupees , bearing date the day of , and payable on the day of .

If the suit be for the price of goods sold:—Payment of Company's rupees on account of maunds of (rice, indigo, sugar, or as the case may be), sold on the day of , and the price of which became payable on the day of .

If the suit be for damages for slanderous words:—Payment of Company's rupees , on account of injury done to the Plaintiff, by calling him on the day of , a (thug, or thief, or as the case may be), or by causing to be published on the day of , in a newspaper entitled the , (or otherwise as the case may be), the following slanderous words concerning him (stating them at length, as the case may be).

4. When the claim is for any property other than money, its estimated value in Company's rupees. The following are instances:

If the suit be for a Zemindary, or share in a Zemindary:—Possession of a Zemindary, or of anas gundas share in a Zemindary, called situate in the zillah of , the Sudder Jummah of which is Company's rupees , and estimated value Company's rupees , of which the Plaintiff was dispossessed (or forcibly or fraudulently dispossessed, if the case be so,) on the day of ; or to which the Plaintiff became entitled by inheritance from , on or about the day of ,

5. When the claim is for a declaration of right, or the fulfilment of a duty in which the Plaintiff is interested, or that the Defendant be restrained from the committal of any breach of a contract or other injury to the Plaintiff, or for anything not susceptible of pecuniary valuation, it shall not be necessary to specify the estimated value of any property or any sum of money by way of damages.

6. In all suits by or against the Government, or one of its officers in his official capacity, or the East India Company, or any other Corporation, or any Company authorized to sue and be sued in the name of an officer or trustees, the words "The Government," or "The Collector of ," or otherwise as the case may be, or "The East India Company," or name of the Corporation or name or names of the officer or trustees of the Company, shall

be inserted in Nos. 1 and 2, instead of the name and description of the Plaintiff or Defendant. But in all other cases it shall be necessary to specify the names of all the parties.

X.

Application to be rejected if the claim is beyond the jurisdiction of the Court.

If the amount or estimated value of the claim, as stated by the Plaintiff, be beyond the jurisdiction of the Court the officer shall refuse to receive the application.

XI.

Reference to be made to the Judge in a suit for property in different jurisdictions.

If the suit be for land or other real property, situate partly within the jurisdiction of the Court, and partly within the jurisdiction of some other Court or Courts, the officer shall submit the application for the order of the Judge.

XII.

When the claim is within the Court's jurisdiction, the officer shall enter the particulars in a Register.

If the amount or estimated value of the claim, as stated by the Plaintiff, be within the jurisdiction of the Court, the above particulars shall be entered by the officer in a book to be kept for the purpose, and called the Register of Civil Suits, and the entries shall be numbered in every year according to the order in which the application shall be made.

XIII.

Form of the Register.

The Register shall be kept in the form contained in the Schedule (A.) hereunto annexed; and a certified copy of the Register, under the seal of the Court, shall be received in evidence in all Courts of justice in India.

XIV.

Document of debt should be shown to the officer.

When the Plaintiff's demand is founded on any instrument in writing, as constituting or acknowledging the demand, such as a bond, tumossook, bill of exchange, hoondee, ikrar, or acknowledgment, the same shall be produced and shown to the officer at the time of applying for the summons, and a copy of the instrument shall be delivered to him at the same time, for the purpose of being served with the summons on the Defendant; and if such instrument shall not be produced it shall not be received in evidence on behalf of the Plaintiff at the hearing or trial of the cause, without the sanction of the Court. When there is more than one Defendant, a copy of the instrument for each defendant shall be delivered to the officer; unless all the Defendants are members of one joint and undivided Hindoo family, in which case one copy of the instrument will be sufficient.

XV.

Summons may be for settlement of issues, or final disposal.

The person applying to the officer for a summons shall state at the time of his application, whether he requires a summons for the first hearing and settlement of issues or for the final disposal of the cause.

Of Summoning the Defendant.

XVI.

Form of Summons.

The summons shall be in the following form, or to the following effect:—

No. of Suit

In the Court of the of

holden at

Plaintiff.

Defendant.

[Name, description, and address of Defendant.]

You are hereby summoned to appear at this Court on the day of at in the forenoon, to answer [name, description, and address of Plaintiff,] to a claim for [here state the particulars, as in the Register referred to in Article XIII.]

Dated the day of

(Signature.)

Costs of summons and service

This summons must be served on or before the day of

N.B.—See notice at back.

XVII.

Special directions shall be endorsed on the summons, which, if the application be for a summons for the first hearing, and settlement of issues, shall be as follows:— Directions to be endorsed on summons to settle issues.

1. If you admit the Plaintiff's claim, you must deliver your admission in writing, under your signature, to the officer of the Court, together with the costs marked on the summons, five clear days before the day for appearing to this summons; but you may enter your admission at any time on or before the day of appearing, subject to the payment of further costs.

2. If you admit any part of the Plaintiff's demand, and pay to the officer of the Court the amount so admitted, together with the costs, five clear days before the day of appearance, you will avoid any further costs, unless the Plaintiff at the hearing shall prove a demand against you exceeding the sum so paid into Court.

3. If you deny the Plaintiff's claim, or any part of it, you must appear on the day fixed in the summons, and be prepared to answer all questions that may be put to you by the Judge, relating to the Plaintiff's demand, and your liability thereto, and to state any objections which you may have to make to the same.

4. You must bring all documents or instruments in writing of any description, which you may wish to produce in explanation, or as evidence of your defence to the suit, or of any counter-claim against the Plaintiff which you may desire to make a set-off to his demand against you; and, in particular, you must bring with you all or any instruments in writing or things which may be specified in any notice to produce that accompanies this summons, or that may be served on you within a reasonable time before your appearance thereto.

5. If you do not appear in person, you must employ one of the Attorneys or Vakeels of the Court to appear in your stead, and must furnish him with the documents, instruments, or things above referred to, and with any information that you possess in regard to the Plaintiff's demand, and your own defence thereto, so as to enable him to answer for you in all respects as you could do yourself if interrogated in person. And if you fail in any of these matters, and your Attorney or Vakeel is unable to answer any questions that may be put to him on your behalf by the Judge, and the Judge shall be of opinion that the documents, instruments, or things referred to, are such as you ought to have produced, or that the questions put to your Attorney or Vakeel are such as you ought to be able, or are likely to be able, to answer, if interrogated in person, the hearing of the case will be postponed, a notice will be given to your Attorney or Vakeel requiring your personal appearance, and the production of the documents, instruments, or things referred to, and you will have to pay all the costs; and if you should fail to appear in obedience to such notice, judgment will be given against you by default.

6. If you do not appear on the day fixed in the summons, either in person or by an Attorney or Vakeel of the Court, judgment will be given against you by default.

XVIII.

If the application be for a summons finally to dispose of the case, this further direction shall be endorsed thereon:— Further direction on summons for final disposal of the case.

7. You are required to take special notice, that the day fixed in the summons for your appearing is appointed for the final disposal of the case, and that you must be prepared to produce all your witnesses. If you fail to do so, and the Judge shall think proper to postpone the cause to another day, in consequence of your default, you will have to pay all the costs that may be incurred by the postponement. If your witnesses will not come at your request, you should apply to the officer of the Court, either in person or by Attorney or Vakeel, not later than the day of , for subpœnas to compel their attendance.

XIX.

If the summons be to settle the issues, the day for the appearance of the Defendant shall not be less than ten days, exclusive of the day of service Time for appearance on a summons to settle issues.

and day of appearance, above the time that may be necessary for the service of the writ, such time to be computed at the rate of one day for every eight miles in a straight line that the residence of the Defendant may be distant from the Court.

XX.

Time for appearance on a summons for final disposal of the case.

If the summons be for a final disposal of the case, the day to be fixed for the appearance of the Defendant shall not be less than fifteen days (exclusive as aforesaid) above the time that may be necessary for the service of the writ, such time to be computed in the manner above mentioned.

Service of Summons on the Defendant.

XXI.

Summons shall be served by the officer.

The writ of summons shall be delivered to the Bailiff or other proper officer of the Court, to be served by himself or one of his subordinates, and such officer shall be responsible for its due service.

XXII.

Latest day of service to be written at foot of the summons.

A day on or before which the summons must be served shall be written at the foot of the summons before delivery to the officer, and the day so to be written shall be always such as to allow the Defendant the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

XXIII.

How service shall be made.

Service of the summons shall be made by exhibiting the original under the seal of the Court, and delivering or tendering a copy thereof and of the endorsements thereon, together with any notice to produce, and copies of any documents or instruments in writing that may have been delivered to the Clerk or proper officer of the Court, at the time of applying for the summons, for the purpose of being served therewith.

XXIV.

When there are several Defendants.

When there are several Defendants, service of the summons shall be made on each Defendant, unless all the Defendants are members of one joint and undivided Hindoo family; in which case service on any one of the Defendants shall be sufficient, if made at the dwelling house of the joint and undivided family.

XXV.

Service to be on Defendant in person, or on his accredited agent.

Whenever it may be practicable, the service shall in all cases be on the Defendant in person, unless he have an accredited agent, empowered to accept the service; in which case service on such agent shall be sufficient.

XXVI.

Who may be an agent for this purpose.

Any Attorney or Vakeel of the Court, or any other person residing within its local jurisdiction, may be appointed an accredited agent to receive the services of summonses and all other judicial process. The appointment shall always be in writing, and shall be filed with the Clerk or other proper officer of the Court to which the agent is accredited, and shall be considered to be in full force until it shall be revoked, and such revocation be recorded with the proper officer of the Court.

XXVII.

Accredited agents of Government and the East India Company.

The Vakeel of Government in the High Court shall be accounted the accredited agent of the Government and of the East India Company for the purpose of receiving services of summonses, and all other judicial process against the Government or the East India Company that may be issued out of the said High Court, and the Government Pleader in all other Courts shall in like manner be accounted the accredited agent of the Government for the purpose of receiving sevices of summonses and all other judicial process against the Government, issuing out of the Court in which he may be the Pleader of Government.

XXVIII.

When the Defendant cannot be found, and has no accredited agent empowered to accept the service, it may be made on any adult member of his family residing with him.

If Defendant cannot be found, service may be made on a member of his family.

XXIX.

In all cases where the summons is served on the Defendant personally, or any agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service to be endorsed on the original summons.

The person served is to be required to endorse the summons.

XXX.

When the Defendant cannot be found, and there is no agent or other person empowered to accept the service, nor any member of his family on whom the same can be served, the serving officer shall fix the copy of the summons with its endorsement, and accompanying notice and copies of documents, if any be annexed thereto, on the outer door of the Defendant's dwelling house; and if he shall have no dwelling house in the place, the serving officer shall return the summons to the Court from whence it issued with an endorsement thereon that he has been unable to serve it.

If the summons cannot be served, it is to be returned with an endorsement of non-service.

XXXI.

The serving officer shall in all cases in which the summons has been served, endorse on the original summons the time and the manner when and how it was served.

If served, time and manner of service to be endorsed.

XXXII.

In all cases in which a summons shall be returned to the Court without having been served on the Defendant, the Plaintiff shall be at liberty to apply to the Court for an order to substitute some other mode of serving the summons for service in the manner above specified; and if it shall appear to the Court that there is reasonable ground for believing that the Defendant is keeping out of the way of its officer, for the purpose of avoiding the service of the summons, it shall pass an order directing that the summons may be served by fixing up copies thereof, with its endorsement and accompanying notice and copies of documents, if any be annexed thereto, upon some conspicuous place in the Court House and also upon the door of the house in which the Defendant shall have last resided if it be known where he last resided; or that the summons shall be served in such other manner as the Court shall think proper. And the service which shall be substituted by order of the Court shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

If the summons be returned unserved, the Plaintiff may apply to the Court to substitute service.

XXXIII.

Whenever service shall be substituted by order of the Court, by virtue of the power contained in the last article, the time for the appearance of the Defendant shall be enlarged, so as to allow him the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

When service is substituted, the time for appearance is to be enlarged.

XXXIV.

If the Defendant be resident within the jurisdiction of any other Court than that in which the suit may be instituted, and has no accredited agent empowered to accept the service, the summons shall be transmitted by the Clerk or proper officer of the Court to the Clerk or proper officer of the Court within whose jurisdiction the Defendant may reside, with such enlargement of the time for appearance as the case may require. And the Clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the Bailiff or other proper officer of his own Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be transmitted to the Clerk or proper officer of the Court from whence it originally issued.

How the summons is to be served when the Defendant is out of the jurisdiction.

XXXV.

If the Defendant be resident at some place out of the territories of the East India Company, and have no agent empowered to accept the service, and the

How it is to be served when he is out of the terri-

tories of the East India Company.

suit be for landed or other real property, the summons may be served on any person in charge of the landed or other real property to which the suit may relate, and the service shall be as effectual for all purposes of the suit as if the person had been duly empowered to accept it. If there shall be no person in charge of the landed or other real property to which the suit relates, on whom the summons can be served, or if the suit shall not relate to landed or other real property, but the Defendant is nevertheless subject to the jurisdiction of the Court by reason of the cause of action having arisen within the limits of its jurisdiction, a copy of the summons and of the endorsements thereon, together with any notice to produce, and any copies of any documents or instruments in writing that may have been delivered to the Clerk or other proper officer of the Court, at the time of applying for the summons for the purpose of being served therewith, shall be addressed to the Defendant at the place where he may reside, and forwarded to him by post: Provided that in all cases in which a Defendant is resident at some place out of the territories of the East India Company, the time for the appearance of the Defendant shall be regulated by the time which may be required for communication by post between the place at which the Court is holden and the place where the Defendant resides; and provided also, that if on the day fixed for the hearing of the cause, or on any other day subsequent thereto on which the cause may be called on, the Defendant shall not appear in person, or by Attorney or Vakeel, the Plaintiff shall apply to the Judge, and it shall be lawful for the Judge to direct that the Plaintiff shall be at liberty to proceed with his suit in such manner and subject to such conditions as to such Judge may seem meet; provided always, that the Plaintiff shall prove his case to the satisfaction of the Judge, and the making such proof shall be a condition precedent to his obtaining judgment.

XXXVI.

How native officers and soldiers are to be served.

When the defendant is a native officer or soldier in the service of the Government, a copy of the summons and of the endorsements thereon, together with any notice to produce and any copies of any documents or instruments in writing that may have been delivered to the Clerk or other proper officer of the Court for the purpose of being served therewith, shall be transmitted by the Judge to the commanding officer of the corps to which the native officer or soldier shall belong, for the purpose of being served on such native officer or soldier. The commanding officer, after causing the summons and its accompanying notices and copies of documents to be served on the party to whom it is addressed if practicable, shall return the summons to the Judge, with the written acknowledgment of the party endorsed thereon. If from any cause the summons cannot be served upon the native officer or soldier to whom it is addressed, it shall be returned by the commanding officer to the Judge from whom it may have been received, with information of the cause which has prevented the service of it. In such case the Court shall either make a further reference with the view of causing the summons to be duly communicated to the native officer or soldier, or shall adopt such other measures for that purpose as, on a consideration of the circumstances of each case, shall appear to be proper.

How privileged Persons are to be summoned.

XXXVII.

Substitutes for the summons in the case of privileged persons.

Nothing contained in the preceding rules shall be construed to prevent the Court from substituting for the summons, a letter, roobekaree, or other appropriate proceeding under the seal of the Court, when the person whose presence is required is of a rank or class in society which entitles him to such mark of consideration; and in such cases the letter or other proceeding shall be treated in all respects as a summons, and shall be accompanied with a copy of the directions which would ordinarily be endorsed on the summons, and with any notice and copies of any other documents which would have been delivered therewith, if a summons had been issued for the appearance of the party.

XXXVIII.

A list of the persons (if any) residing within the limit of the Court's jurisdiction, who are entitled to the mark of consideration mentioned in the last article, shall be kept in the office of the Clerk or other proper officer of the Court, and any application for a summons against a person whose name is entered in the said list, shall be referred by the officer to the Judge for his order before the summons shall be issued to the Defendant.

List of privileged persons to be kept by the officer of Court.

XXXIX.

When a letter or other proceeding is sent to a party on account of his being of a class or rank of society that entitles him to that distinction, it may be transmitted through the post-office, or by a special messenger selected by the Court, or in any other manner that the Court may deem sufficient; unless the party shall have an accredited agent empowered to accept service of judicial process; in which case delivery to such agent shall be sufficient service. When the letter is transmitted through the post-office, or by special messenger, proof that it was duly posted, or was delivered to the messenger, shall be sufficient proof of its due service, in the absence of evidence to the contrary.

Service how to be made on privileged persons.

How Persons not before the Court may be made Parties to a Suit.

XL.

In every suit concerning the succession of right of inheritance to a zemindary, talook, land, house, or other real property, to which there may be more persons than one who by the Hindoo or Mahomedan law (regard being had to the religion of the claimants) would be entitled to a portion of the estate, there shall be issued, at the same time with the summons to the particular Defendant or Defendants, and in addition thereto, a proclamation setting forth the names of the parties, the nature of the suit, the day fixed for the hearing of the cause, and whether it have been fixed for the first hearing and settlement of issues, or for final disposal, and calling on all persons having any claim to any share or interest in the property, to appear on the said day, either in person or by an Attorney or Vakeel of the Court, and be prepared to state their claims to the Court, and to support them by proper evidence.

In certain cases of inheritance, a proclamation for claimants to be issued at the same time as the summons to the Defendant.

XLI.

The proclamation shall be read aloud by the officer employed to serve the summons on some public place, within the limits of the zemindary, talook, land, or other real property concerning which the suit may be brought, and copies thereof shall be fixed up in some conspicuous part of the Court House, and on the outer door of the family dwelling house of the person the right of succession or inheritance to whose property is in question, or of the house in which he may have last resided. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the suit may be brought.

Proclamation how to be published.

XLII.

If in any suit it shall appear to the Court at any hearing of the cause, that all the persons who may be entitled to some share or interest in the property in dispute, have not been made parties to the suit, it shall be competent to the Court to adjourn the hearing of the cause to a future day to be fixed, and to direct a proclamation to be issued calling upon all persons having any claim to any share or interest in the property to appear on the day so to be fixed, and be prepared to state their claims to the Court, and to support them by proper evidence. If the suit shall relate to the succession or right of inheritance to a zemindary, talook, land, house, or other real property, the proclamation shall be published or made known in the manner prescribed in the last preceding article. If the suit shall relate to any other matter or thing, a copy of the proclamation shall be fixed up in some conspicuous part of the Court House, and it shall also be competent to the Judge to direct that the pro-

Proclamation may be issued in any suit by order of the Court.

clamation shall be published or made known in such or other manner as he may think proper. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall in all cases be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the suit may be brought.

XLIII.

If any claimant appear he is to be treated as a party to the suit.

If any claimant shall appear on the day fixed in any proclamation issued under the provisions of Article XL. or of Article XLII., the Court shall investigate his claim and pronounce a decision thereon, in the same way as if he had been made originally a party to the suit.

Of Suits against the Government and its Officers, and the East India Company.

XLIV.

If the suit be against the Government or its officers, the application for a summons is to be referred to the Judge.

If the suit be against the Government, or against any of its officers for acts which the Plaintiff at the time of applying for the summons alleges to have been done in an official capacity, the application for the summons shall be referred by the officer to the Judge for his order before any summons shall be issued to the Defendant.

XLV.

In cases where the Civil Courts have no direct jurisdiction against the officers of Government, the applicant is to be referred to the Government.

If it shall appear to the Judge, after examining the applicant, that the act complained of was done pursuant to a special order originating with the Government, or with the Board of Revenue, and that the officer by whom the act was done is not liable to be sued for it, the Judge shall direct the person who may have made the application for the summons to apply in the first place to the Government by petition, stating wherein he considers himself injured under the Regulations of the Bengal Code, or the Acts of the Council of India, and praying that the Government will order the Court of Civil Judicature in which the cause may be cognizable, to try the contested point or matters by the Regulations or Acts. If the Government shall deem proper to grant the prayer of such petition, and the plaintiff shall file an order to the above effect with the Clerk or proper officer of the Court; or if a Plaintiff shall in the first instance, with his application for a summons in a case of the aforesaid description, produce an order from the Government to the effect aforesaid, and it shall appear to the Judge that the case is within his jurisdiction and cognizable under the order, he shall direct the summons to be issued to the officer by whom the act complained of may have been done, in the same way as is herein-before prescribed for the issuing of summonses to private individuals; and in no case shall a summons be issued to any Defendant in a case of the nature aforesaid without an order to the effect aforesaid.

XLVI.

In cases where the Civil Courts have direct jurisdiction against the officers of the Government, the Judge is to refer to the Board of Revenue.

If it shall appear that the act complained of was done without any order of the Government, or of the Board of Revenue, and that the act complained of is one for which the officer by whom it was done is declared amenable under the Regulations of the Bengal Code or the Acts of the Council of India, the Judge shall transmit the particulars of the claim, as set forth in the Register referred to in Article XIII., to the Board of Revenue, together with copies of any documents or instruments in writing that may have been delivered to the clerk or proper officer of the Court at the time of applying for the summons, for the purpose of being served therewith.

XLVII.

How the Board of Revenue is to proceed in cases referred to it.

The Board of Revenue, after making due inquiries on the subject, shall determine whether the party complaining is entitled to redress directly from Government, or whether he shall be left to prosecute the case in the regular course of law; and if they shall be of opinion that the party should be left to prosecute the case in the regular course of law, they shall inform the Judge by whom the case may have been referred to them of their determination to that effect, and also whether the case is to be defended by the public officer as a

suit against the Government, or by the person affected by the complaint in his individual capacity.

XLVIII.

At the expiration of   days from the transmission, or at any earlier period when the Judge may receive intimation from the Board of Revenue that it has been decided that the party complaining shall be left to prosecute his case in the regular course of law, the Judge shall direct a summons to be issued to the officer whose act has been complained of, in the same manner as is herein-before prescribed for the issuing of summonses to private individuals. When the summons is to be issued.

The blank in this article is left to be filled up by the local government.

XLIX.

If the suit be against the East India Company, the summons shall be served on the Government Vakeel in the High Court, who shall appear for the said Company on the day therein mentioned, to answer on their behalf to the suit of the Plaintiff. And if the said Vakeel shall appear on the day mentioned in the summons, and answer to the suit of the Plaintiff, or if he shall not appear on the said day, or on any subsequent day on which his appearance may be required during the progress of the suit, or if he shall so appear, but shall refuse to be unable to answer any question that may be put to him by the Court relative to the suit, the procedure shall be the same in all respects as is herein-after provided for suits against individual parties, or as near thereto as the circumstances of the case will admit. Suits against the East India Company.

Of Arrest before Judgment.

L.

If in any suit the Defendant, [with intent to avoid or delay the Plaintiff, is about to leave the jurisdiction, the Plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the Court to demand that security be taken for the appearance of the Defendant, to answer any judgment that may be passed against him in the suit. When Defendant is about to leave the jurisdiction Plaintiff may apply that security be taken for his appearance.

LI.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the Defendant is about to leave its jurisdiction with the intent of avoiding or delaying the Plaintiff, it shall issue a warrant to the proper officer, enjoining him to bring the Defendant before the Court, that he may give good and sufficient bail for his appearance at any time when called upon while the suit is pending, and until execution of any decree that may be passed against him in the suit; the surety or sureties undertaking, in default of such appearance, to pay, to an extent to be fixed by the Judge and specified in the warrant, any sum of money that may be adjudged against him in the suit, with costs. How the Court is to proceed on such application.

LII.

The sureties for the personal appearance of the Defendant may at any time apply to the Court to be relieved from their engagements as sureties, whereupon the Court shall issue its warrant directing that the Defendant be brought before it. On the appearance of the Defendant to such warrant, or on his voluntary surrender, the Judge shall direct the engagement of the sureties to be cancelled, and shall call upon the Defendant to give fresh security, and in default thereof shall commit him to custody. Sureties may apply to be relieved from their engagements.

LIII.

Should a Defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit, and forthwith discharge the Defendant. Deposit in lieu of bail.

LIV.

Defendant to be committed to custody if he cannot give security.

In the event of the Defendant neither furnishing security, nor offering a sufficient deposit, he may be committed to custody until the decree shall have been passed.

LV.

When the Defendant is about to leave the country the application to be made to the High Court.

If in any suit the Defendant is about to leave the jurisdiction of the High Court with intent to remain absent so long that the Plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the Defendant, the Plaintiff may make an application to the High Court, or to any Judge or Judges thereof, to the effect and in the manner aforesaid, and the procedure shall be in all respects the same as herein-before provided, except that the security for the appearance of the Defendant shall be for his appearance in the Court, whatever it may be, in which the suit is pending.

Of Sequestration before Judgement.

LVI.

In certain cases Plaintiff may apply for a sequestration of Defendant's property.

If the Defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, it shall be lawful for the Court, on the application of the Plaintiff in manner aforesaid, either at the institution of the suit or at any time thereafter until final judgment, to call upon the Defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, when required; and on his failing to give such security, to direct that any property, real or personal, belonging to the Defendant, or any debts due to him, or any money standing in his name or to his account and in deposit in any Court of justice, or any office of Government, or at his credit in any bank, or any interest or dividends payable or thereafter to become payable on any Government paper or shares in the capital or joint stock of any banking, railway, or other public company or corporation, standing in his name, or such a portion of such property, debts, or money as may be sufficient to fulfil the decree, shall be attached, and held in sequestration until the further order of the Court.

LVII.

Application, how to be made.

The application shall be accompanied with the following particulars distinctly written in the language in use in proceedings before the Court, viz., the nature and amount of the claim, the property required to be sequestrated, and the supposed value of each article or item thereof; and the Plaintiff shall, at the time of making the application, declare that the claim is a just one, and that the Defendant is about to dispose of or remove his property in manner aforesaid.

LVIII.

Defendant may be called on for security.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the Defendant intends to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, and if the Plaintiff shall in person or by his agent enter into a bond rendering himself liable in such sum as may be judged adequate for all injury arising from the sequestration, in the event of his demand being disallowed, either wholly or in part, the Court shall thereupon issue a warrant to the proper officer commanding him to require security from the Defendant, in such sum as may be specified in the order, to produce and place at the Court's disposal, when required, the said property, or a portion thereof sufficient to fulfil the decree.

LIX.

If security is not provided property may be sequestrated.

If such security is not furnished within the time specified in the order, the Court shall direct that the property, debts, or money mentioned in the particulars which accompanied the Plaintiff's application, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached, and kept under sequestration until further order.

LX.

The process for requiring security and for attachment and sequestration, when the property shall consist of goods and chattels, or other personal estate and effects, may be issued successively or simultaneously, as the Court shall think proper.

Process for taking security and for sequestration may be simultaneous.

LXI.

The attachment and sequestration shall be made, according to the respective natures of the property to be attached and sequestrated, in the manner herein-after prescribed for the attachment of property in execution of a decree for money.

How the sequestration is to be made.

LXII.

In all cases of sequestration before judgment, the Court which passed the the order for the sequestration shall at any time remove the same, on the Defendant's furnishing security as above required, together with security for the costs of the sequestration.

Sequestration may be removed when security is furnished.

LXIII.

If, on the trial of the suit, it shall be discovered that the sequestration was applied for on insufficient grounds, or if the Plaintiff's claim is disallowed, either wholly or in part, the Court shall (unless the Defendant shall in preference seek redress by a civil action for damages) award against the Plaintiff in its decree the whole of the amount specified in his penalty bond, or such part thereof as it may deem a reasonable compensation to the Defendant for the expense or injury occasioned to him by the Plaintiff.

Compensation for needless sequestration.

LXIV.

Sequestrations before judgment shall not bar any person holding a decree against the Defendant from attaching the property under sequestration, or affect the rights of persons not parties to the suit.

Sequestration not to bar the execution of decrees or injure third parties.

LXV.

But if the party at whose instance the property was sequestrated points out other property of the Defendant unattached, the creditor shall be bound in the first instance to attach and sell such property in execution of his decree, before selling the property under sequestration.

But person holding the decree is first to attach any other property of the Defendant that may be pointed out.

LXVI.

Whenever lands paying revenue to Government form the subject of a suit, if the party in possession of such lands shall neglect to pay the Government revenue, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue due previously to the sale, (and with or without security at the discretion of the Court,) be put in immediate possession of the lands, and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of 1 per cent. per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause.

Special case in which Plaintiff may be put in immediate possession of land the subject of suit.

Of Injunctions.

LXVII.

In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the cause is in danger of being wasted or damaged by any party to the suit, it shall be lawful to the Court to issue its injunction to such party, commanding him to refrain from doing the particular act or acts complained of, or to give such other orders for the purpose of staying and preventing him from wasting or damaging the property, as to the Court may seem meet. And in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a cause, it shall be lawful to the Court to appoint a receiver or manager of such property, and if need be to remove the person or persons in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or

Cases in which an injunction to stay waste may be granted;

or in which a receiver or manager may be appointed.

manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper.

LXVIII.

Special rule in actions for injunctions.

In any suit for restraining the Defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the Plaintiff at any time after the commencement of the suit, and whether before or after judgment, to apply *ex parte* to the Court for an injunction to restrain the Defendant from the repetition, or the continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted or denied by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be enforced by imprisonment in the same manner as a decree for specific performance; provided always, that any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Of Withdrawing Suits.

LXIX.

How the Plaintiff may withdraw from a suit.

If the Plaintiff be desirous of withdrawing from the cause, he may give notice thereof to the Clerk or proper officer in person, or by his Attorney or Vakeel, and to the Defendant by pre-paid post letter; after the receipt of which by the Defendant he shall not be entitled to any further costs than those incurred up to its receipt, unless the Judge shall otherwise order; and proof that the letter was duly posted shall be sufficient proof of the receipt thereof by the Defendant, in the absence of evidence to the contrary.

LXX.

Effects of withdrawal.

If the notice be given to the officer at any time before the day mentioned in the summons, the Plaintiff shall be at liberty to bring a fresh suit for the same matter, unless precluded by the rules for the limitation of actions. If the notice be given on or subsequent to the day mentioned in the summons, the Plaintiff shall be precluded from bringing a fresh suit for the same matter, unless he shall have previously obtained the consent of the Defendant, or the permission of the Judge to withdraw the suit. It shall be competent to the Judge at any time before final judgment to grant such permission on what may appear to him sufficient grounds for so doing, and on such terms as to costs or otherwise as he may deem proper.

Of the Death, Marriage, and Bankruptcy or Insolvency of Parties.

LXXI.

Suit not to abate by death.

The death of a Plaintiff or Defendant shall not cause the suit to abate. A note of the death shall be entered on the register of the suit, and the suit may be continued as herein-after mentioned.

LXXII.

Proceedings in case of death of one or more of several Plaintiffs or Defendants.

If there be two or more Plaintiffs or Defendants, and one or more of them should die, and if the cause of action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs, against the surviving Defendant or Defendants.

LXXIII.

Proceedings in case of death of one or more of several Plaintiffs,

If there be two or more Plaintiffs, and one or more of them should die, and if the cause of action shall not survive to the surviving Plaintiff or Plaintiffs alone, but shall accrue to them and the legal representative or representatives of

the deceased Plaintiff or Plaintiffs, the Court may, on the application of the legal representative or representatives of the deceased Plaintiff or Plaintiffs, enter the name or names of such representative or representatives in the register of the suit in the place or stead of such deceased Plaintiff or Plaintiffs, and the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs and such legal representative or representatives of the deceased Plaintiff or Plaintiffs; and if the application be made before the trial, and there be any dispute as to the fact of the person or persons so applying being the legal representative or representatives of the deceased Plaintiff or Plaintiffs, the truth thereof shall be tried thereat, together with the title of the deceased Plaintiff or Plaintiffs, and judgment shall be given in favour of or against the person or persons making such application, as if such person or persons were originally a Plaintiff or Plaintiffs. If no application shall be made to the Court by any person or persons claiming to be the legal representative or representatives of the deceased Plaintiff or Plaintiffs, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of the deceased Plaintiff or Plaintiffs to appear on a day to be fixed in such proclamation, and to proceed with the suit in his or their stead. If any person or persons shall appear on the day mentioned in the proclamation to proceed with the suit as the legal representative or representatives of the deceased Plaintiff or Plaintiffs, his or their name or names shall be entered in the register of the suit, and the suit shall proceed at the instance of the surviving Plaintiff or Plaintiffs and such person or persons so appearing as the legal representative or representatives of the deceased Plaintiff or Plaintiffs; and if the appearance be made before the trial, and there be any dispute as to the fact of the person or persons so appearing being the legal representative or representatives of the deceased Plaintiff or Plaintiffs, the truth thereof shall be tried thereat together with the title of the deceased Plaintiff or Plaintiffs, and judgment shall be given in favour of or against the person or persons so appearing, as if such person or persons were originally a Plaintiff or Plaintiffs. And if no person shall appear on the day to be fixed in the said proclamation, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and if judgment be given in favour of the Defendant, the legal representative or representatives of the deceased Plaintiff or Plaintiffs shall be bound thereby equally with the surviving Plaintiff or Plaintiffs; but if judgment be given against the Defendant or Defendants, it shall only be to the extent of the share or shares of the surviving Plaintiff or Plaintiffs, and with a reservation of the rights of the legal representative or representatives of the deceased Plaintiff or Plaintiffs.

where the right of action accrues to the survivor and the representative of the deceased.

LXXIV.

In case of the death of a sole Plaintiff or sole surviving Plaintiff, the Court may, on the application of the legal representative or representatives of such Plaintiff, enter the name of such representative or representatives in the place or stead of such Plaintiff in the register of the suit, and the suit shall thereupon proceed; and if such application be made before the trial, and the fact be disputed, the truth thereof shall be tried thereat with the title of the deceased Plaintiff, and judgment shall be given in favour of or against the person or persons making the application, as if such person or persons were originally the Plaintiff or Plaintiffs. If no application shall be made to the Court within what it may consider a reasonable time by any person or persons claiming to be the legal representative or representatives of the deceased sole Plaintiff or sole surviving Plaintiff, it shall be competent to the Court to pass an order that the suit shall abate, and to award the Defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate or estates of the deceased sole Plaintiff or surviving Plaintiff, or if the Judge shall think proper he may, on the application of the Defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative or representatives of the deceased sole Plaintiff or surviving Plaintiff, and prosecuting a suit to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

Proceeding in case of death of sole or sole surviving Plaintiff

LXXV.

If there be two or more Defendants, and one or more of them should die, and the cause of action shall not survive against the surviving Defendant or Defendants

Proceeding in case of death of one or more of

several Defendants, or of a sole or sole surviving Defendant.

alone, and also in case of the death of a sole Defendant or sole surviving Defendant, where the action survives, the Plaintiff may make an application to the Clerk or other proper officer of the Court, with the following particulars distinctly written in the language in ordinary use in judicial proceedings before the Court, viz., the name, description, and place of abode of auy person or persons whom he alleges to be the legal representative or representatives of such Defendant or Defendants, and whom he desires to be made the Defendant or Defendants in his or their stead, and the Clerk or other proper officer of the Court shall thereupon enter the name of such representative or representatives in the register of the suit in the place or stead of such Defendant or Defendants, and shall issue a summons to him or them to appear on a day to be therein mentioned to defend the suit. If no application shall be made to the Court, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of such Defendant or Defendants to appear on a day to be fixed in such proclamation, and defend the suit. If any person or persons shall appear on the day mentioned in the proclamation, to make defence to the suit, as the legal representative or representatives of the deceased, his or their name or names shall be entered in the register of the suit, in the stead of the deceased Defendant or Defendants, and the suit shall proceed in the same way as if such person or persons had been originally a Defendant or Defendants thereto. And if no person shall appear on the day to be fixed in the said proclamation, the Court may proceed to dispose of the cause in the manner provided in Article LXXXI., or may make such order as may appear to be just and proper in the circumstances of the case.

LXXVI.

Objections which are competent to the new Defendant.

In all cases in which the legal representative or representatives of a deceased Defendant or Defendants shall be entered in the register, in the stead of such deceased Defendant or Defendants, if the issues shall not have been settled before the death, the new Defendant or Defendants shall be entitled to make all objections which would have been competent to the deceased Defendant or Defendants, and in addition thereto may make such other objections to the suit as may be appropriate to and rendered nesessary by his or their character of legal representative; but if the issues shall have been settled before the death, the new Defendant or Defendants shall be at liberty to object only by way of denial, or to make such other objection only as may be appropriate to and rendered necessary by his or their character of legal representative, unless by the leave of the Judge he or they shall be permitted to object fresh matters; and in case the Plaintiff shall recover he shall be entitled to the like judgment in respect of the debt or sums sought to be recovered, and in respect of the costs prior to the entry of the name of the new Defendant or Defendants, as he would have been entitled to against the original Defendant or Defendants, and in respect of the costs subsequent thereto he shall be entitled to the like judgment as in an action originally commenced against the legal representative.

LXXVII.

Marriage of a female Plaintiff or Defendant not to abate the suit.

The marriage of a woman, Plaintiff or Defendant, shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with the permission of the Court, be issued, upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree; and if in any such suit the wife shall sue or defend by Attorney or Vakeel appointed by her when sole, such Attorney or Vakeel shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the Attorney or Vakeel changed by authority of the Court.

LXXVIII.

Bankruptcy or insolvency when not to abate the suit.

The bankruptcy or insolvency of the Plaintiff in any suit which the assignees might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the assignees shall decline to continue the

suit, and give security for the costs thereof, within such reasonable time as the Judge may order; but the proceedings may be stayed until such election is made; and in case the assignees neglect or refuse to continue the suit, and to give such security, within the time limited by the order, the defendant may, within eight days after such neglect or refusal, object bankruptcy or insolvency as a reason for abating the suit.

Of Notices to produce, and how they are to be served.

LXXIX.

Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he supposes to be in the possession or power of another of the parties thereto, should be produced at any hearing of the cause, he shall at the earliest opportunity deliver to the Clerk or proper officer of the Court two notices in writing to the party in whose possession or power he supposes the document, writing, or other thing, to be, calling upon him to produce the document, writing, or other thing, on the day on which he wishes the same to be produced; and one of such notices shall be retained by the officer, and the other shall be delivered by him to the bailiff or proper officer, to be served in the manner herein-after mentioned: **Two notices in writing to be delivered to the proper officer of the Court.**

1. If the party on whom the notice is to be served shall have employed an Attorney or Vakeel to act for him in the cause, the notice shall be served on such Attorney or Vakeel by delivering the notice to him personally, or by leaving it at his office or ordinary place of residence. **How the notice is to be served.**
2. If a party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall have his place of abode within a radius of eight miles from the Court House, the notice shall be served on him by delivering it to him personally, or leaving it at his place of abode.
3. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall not have his place of abode within a radius of eight miles from the Court House, but shall have entered in the book, to be kept for that purpose by the proper officer, the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall be served by delivering the same to such person, or by leaving it at his place of abode.
4. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall neither have his own place of abode within a radius of eight miles from the Court House, nor shall have entered in the book to be kept for that purpose the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall in like manner be served by delivering the same to the party in person or by leaving it at his place of abode; unless the notice be for some day subsequent to the first hearing of the cause, in which case it shall be sufficient service of the notice if it be fixed up in some conspicuous place in the office of the Clerk or proper officer of the Court, and also in some conspicuous place of the Court House.

Of the Appearance of the Parties, and Judgment by Default for Non-appearance.

LXXX.

On the day in that behalf mentioned in the summons, and from day to day, if necessary, until the cause is called on, the parties shall be in attendance at the Court House in person or by an Attorney or Vakeel of the Court duly empowered to represent them in all matters relating to the prosecution or defence of the action, as the case may be. **Parties must appear in person or by Attorney.**

LXXXI.

If, on the day fixed for the hearing of the cause, or any other day subsequent thereto on which the cause may be called on, neither party appears, either in **Consequences of non-appearance**

of a sole Plaintiff or Defendant.

person or by an Attorney or Vakeel of the Court, when duly called upon by the proper officer of the Court, the cause shall be struck out, with liberty to the Plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions. If the Plaintiff shall appear in person or by Attorney or Vakeel and the Defendant shall not appear in person or by Attorney or Vakeel, and it shall be proved to the satisfaction of the Judge that the summons was duly served, or if the Defendant, having appeared in person or by Attorney or Vakeel, shall refuse to answer to the claim of the Plaintiff, then and in any of these cases the Judge shall pass judgment against him by default. And in like manner, if the Defendant shall appear in person or by Attorney or Vakeel, and the Plaintiff shall not appear in person or by Attorney or Vakeel, or, having appeared, shall refuse to state his claim or to answer any questions respecting the same that the Judge may think proper to put to him, then and in any of these cases the Judge shall pass judgment against the Plaintiff by default.

LXXXII.

When there are several Plaintiffs or Defendants each may authorize the other to appear for him.

When there are two or more Plaintiffs, any one or more of them may be authorized to appear, plead, and act for the other or others of them; and in like manner, when there are two or more Defendants, any one or more of them may be authorized to appear, plead, and act for the other or others of them; provided that the authority shall in all cases be in writing, and shall be filed with the proper officer of the Court; when so filed it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead, and act were a Vakeel of the Court.

LXXXIII

When such appearance may be made without special authority.

Nothing in the preceding Article contained shall be taken to prevent any one of two or more Plaintiffs or Defendanis from appearing for the other or others of them respectively, without any special authority, when already entitled by law so to do by reason of unity of interest in the matter in dispute, or otherwise howsoever.

LXXXIV.

Consequence of non-appearance of one or more of several Plaintiffs.

Consequence of non-appearance of one or more of several Defendants.

If there are two or more Plaintiffs, and one or more of them shall appear in person, or by Attorney or Vakeel, or by a Co-Plaintiff or Co-Plaintiffs duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by Attorney or Vakeel, or by Co-Plaintiff or Co-Plaintiffs duly authorized or entitled as aforesaid, it shall be competent to the Judge to proceed with the suit at the instance of the other Plaintiff or Plaintiffs who shall have appeared, in the same way as if all the Plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case; and if there are two or more Defendants, and one or more of them shall appear in person, or by Attorney or Vakeel, or by a Co-Defendant or Co-Defendants, duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by Attorney or Vakeel, or by a Co-Defendant or Co-Defendants duly authorized or entitled as aforesaid, and if the Plaintiff or Plaintiffs shall consent to abandon the suit against the Defendant or Defendants who shall have appeared, and if judgment by default can be given against the Defendant or Defendants who shall not have appeared, without detriment to the rights or interests of the other Defendant or Defendants, judgment may be given by default against the Defendant or Defendants who shall have so failed to appear, upon such terms as to the costs of the other Defendant or Defendants, or otherwise, as to the Judge may seem proper; but if the Plaintiff or Plaintiffs shall not agree to abandon the suit against the Defendant or Defendants who shall have appeared, or if judgment cannot be given by default against the Defendant or Defendants who shall not have appeared, without detriment to the rights or interests of the Defendant or Defendants who shall have appeared, the Judge shall proceed with the cause to judgment, and shall at the time of passing his judgment give such order with respect to the Defendant or Defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

LXXXV.

When and how judgment by de-

In all cases of judgment against a Defendant by default, for non-appearance, he may apply, at any time before the same shall have been finally executed,

to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Judge that the summons was not duly served, or that the Defendant was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the cause. And in like manner in all cases of judgment against a Plaintiff by default for non-appearance, he may apply, within a reasonable time, for an order to set aside the judgment; and if it shall be proved to the satisfaction of the Judge that the Plaintiff was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the cause. In all cases whatsoever of judgment by default, in which a Judge shall pass an order for setting aside the judgment, his order shall be final; but in all cases in which he shall reject an application to set aside a judgment by default, an appeal shall lie from his order refusing the application, to the tribunal to which his final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

fault may be set aside.

LXXXVI.

If it shall not be proved to the satisfaction of the Judge that the summons was duly served on the Defendant in sufficient time to enable him to appear in person or by Attorney or Vakeel on the day fixed for the hearing of the cause, the Judge shall, at the option of the Plaintiff, either postpone the cause to a future day, and grant him a second summons to the Defendant, to be served in like manner as aforesaid, in continuation of the existing suit, or permit him to withdraw his suit, and if he shall elect to withdraw his suit, he shall be at liberty to institute a fresh suit for the same matter against the Defendant in the same Court, or in any other Court of competent jurisdiction, at any time, unless precluded by the rules for the limitation of actions.

When the Defendant has not been summoned in sufficient time, the Plaintiff may apply for a new summons or bring fresh suit.

Of the Examination of the Parties.

LXXXVII.

In all suits in which both the parties appear in person or by Attorney or Vakeel before the Judge, they or their Attorneys or Vakeels may be examined orally by the Judge, and it shall be incumbent on them respectively to answer such questions in regard to the suit as he may think proper to put to them.

Examination of the parties or their Attorneys.

LXXXVIII.

If any of the parties shall appear by an Attorney or Vakeel of the Court, and such Attorney or Vakeel shall refuse, or be unable to answer any material question relating to the case, which the Judge is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Judge shall postpone the hearing of the cause to a future day, and direct that the party whose Attorney or Vakeel may have refused, or been unable to answer as aforesaid, shall attend in person on such day, and shall pay the costs of the opposite party;—and if the party so directed to attend shall fail to appear in person on the day to be so appointed, the Judge may pass judgment against him, as in case of default, or give such other order in relation to the cause as he may deem proper in the circumstances of the case.

Consequence of refusal or inability of Attorney to answer.

Of the Production of Documents.

LXXXIX.

The parties, or their Attornies or Vakeels, shall bring with them, and have in readiness at the first hearing of the cause, to be produced when called upon by the Court, all their documentary evidence of every description, and all documents, writings, or other things which may have been specified in any notice to produce which may have been served on them respectively within a rea-

Documentary evidence to be produced at first hearing.

sonable time before the hearing of the cause; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the Court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the non-production of the document at the first hearing.

XC.

Exhibits may be admitted or rejected by the Court.

All exhibits produced by the parties shall be received and inspected by the Court; but it shall be competent to the Court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible.

XCI.

Unstamped documents may be received on payment of duty and penalty.

If the exhibit be a deed, instrument, or writing, chargeable with stamp duty under the existing Regulations of the Bengal Code, or Acts of the Council of India, it shall not be received in evidence if unstamped or not sufficiently stamped, until the whole or the deficiency (as the case may be) or the stamp duty and the penalty required by the existing Regulations of the Bengal Code or Acts of the Council of India shall have been paid to the Clerk or proper officer of the Court.

XCII.

Duty and penalty to be received by officer of Court.

Such officer shall, upon payment to him of the whole, or of the deficiency (as the case may be) of the stamp duty payable upon or in respect of such document, and of the penalty required by the Regulations of the Bengal Code or Acts of the Council of India, give a receipt for the amount of the duty or deficiency which the Judge shall determine to be payable, and also of the penalty; and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall at the end of every month duly make a return to the collector of revenue of the Zillah of the monies (if any) which he has so received by way of duty or penalty, distinguishing between such monies, and stating the number and title of the cause and the names of the parties from whom he received such monies, and the date, if any, and description of the document, for the purpose of identifying the same; and he shall pay over the said monies to the collector of revenue, or to such person as he may appoint or authorize to receive the same; and the collector of revenue, or other proper authority, shall, upon production of the receipt herein-before mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid.

XCIII.

How admitted exhibits are to be marked.

When an exhibit is received by the Court, and admitted in evidence, it shall be endorsed with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record.

XCIV.

Rejected exhibits to be marked and returned.

When an exhibit is rejected by the Court, it shall be endorsed in the manner specified in the last preceding article, with the addition of the word "rejected," and the endorsement shall be subscribed by the Judge. The exhibit shall then be returned to the party who produced it, unless the Court shall think proper, for special reasons, to reclaim it; and in all cases in which a rejected exhibit is returned, a certified copy of the exhibit and the endorsement shall be kept by the Court.

XCV.

When exhibit admitted in evidence may be returned.

When the time for appealing has elapsed, or in case the suit has been appealed, then after the appeal has been finally disposed of, either party shall be entitled, on application to the Court in which the exhibit may be, to receive back any document produced by him in the suit, unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice, as on suspicion of forgery.

XCVI.

Any exhibit may be returned before the time mentioned in the last preceding Article, if the Judge of the Court in which the document may happen to be shall think proper, for special reasons, to order its return.

May be returned sooner, for special reasons.

XCVII.

In all cases in which a document once received by a Court of Justice and admitted in evidence is restored, a copy, properly certified, shall be substituted for it in the record of the suit, and a receipt shall be given by the party receiving it in a separate receipt book kept for the purpose.

Certified copy of returned exhibits to be kept.

XCVIII.

Any Civil Court may of its own accord, or upon the application of any of the parties to a suit, send for, either from its own records or from any other public office or Court, the record of any other suit or case, and inspect the same, when the inspection of such record or any part of it shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

Court may send for papers from its own records or from other public offices or Courts.

Of the Settlement of Issues.

XCIX.

If in the course of the oral examination of the parties or their Attorneys or Vakeels it shall appear that they are not at issue upon any question of law or fact, the Court may at once give judgment; and if it shall appear that they are at issue on some question of law or fact, the Judge after he shall have satisfied himself by such oral examination of the parties or their Attorneys or Vakeels, on what questions of law or fact they are really at issue, will proceed to frame and record the issues of law and fact on which the right decision of the case may appear to him to depend.

Framing of issues.

C.

For the purpose of assisting the Judge in framing the issues, the parties or their Attorneys or Vakeels may tender at the first hearing of the cause written statements of their respective cases, which statements the Judge shall receive and peruse, and put on the record; but he may, nevertheless, frame the issues from the allegations of fact which he collects from the oral examinations, notwithstanding any difference between such allegations of fact, and the allegations of fact contained in the written statements so tendered by the parties or their Attorneys or Vakeels.

Written statement may be tendered by the parties to assist the Judge at the first hearing of the cause.

CI.

No such written statement shall be received after the first hearing of the cause, unless called for by the Judge under the power herein-after contained.

No statement to be taken thereafter unless called for by the Judge.

CII.

It shall be competent to the Judge, at any time before final judgment, to call for a written statement, or an additional written statement, from any of the parties, for the purpose of assisting him to frame or amend the issues.

Judge may at any time call for a written statement.

CIII.

Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but each statement shall be confined, as much as possible, to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court.

How written statements are to be framed.

CIV.

If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is argumentative or unnecessarily prolix,

Judge may reject an improper statement,

or that it contains matter irrelevant to the suit, the Judge may reject the same; and it shall not be competent to a party whose written statement has been rejected for any of these causes, to present another written statement, unless it shall be expressly called for by the Court. If the Judge think proper, he may, instead of absolutely rejecting the written statement, receive and record the same, after he shall have struck out all such parts of the written statement as he may consider to be argumentative, unnecessary, or irrelevant; and such parts of any written statement as may be so struck out by the Judge shall be disallowed upon any taxation of costs as between party and party. It shall also be competent to the Judge to impose upon the party from whose written statement he shall see fit to strike out any part, as being argumentative, unnecessary, or irrelevant, a fine not exceeding fifty rupees.

or expunge irrelevant matter,

and fine party presenting it.

CV.

Judge may call for a person whom he thinks it proper to examine before framing the issues.

If the Judge shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the Court, or without the reading of some document not produced by any of such persons, he may adjourn the framing of the issues to a future day, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by subpœna or other suitable process.

CVI.

Amendment of issues.

At any time before the decision of the case, the Judge may amend the issues on such terms as to him shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

CVII.

Appeal.

If either party is dissatisfied with the issues as finally framed by the Court, such party may appeal upon that ground after the decision of the case.

Of Issues by Agreement of Parties.

CVIII.

Questions of fact, or of law or equity, may be stated by the parties in the form of an issue, and an agreement may be entered into for the payment of a sum of money, or the doing or the refraining to do a particular act, according to the result of the issue.

When the parties to a suit are agreed as to the question or questions of fact, or of law or equity, to be decided between them, they may, at any time after the issue of the summons, state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the Judge in the affirmative or the negative of such issue a sum of money fixed by the parties, or to be ascertained by the Judge upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that some property specified in the agreement, and in dispute in the suit, shall be delivered by one of the parties to the other of them, or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts, specified in the agreement, and having reference to the matter in dispute, either with or without the costs of the suit.

CIX.

The Judge, if satisfied that the agreement was executed *bonâ fide* may decree accordingly.

If the Judge shall be satisfied, after an examination of the parties, their Attorneys or Vakeels, or taking such evidence as he may deem proper, that the agreement was duly executed by the parties. and that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried or decided, he may proceed to record and try the same, and deliver his finding or opinion thereon in the same manner as if the issue had been framed by himself in an ordinary suit, and may upon his finding or deciding in such issue, give judgment for the sum so fixed by the parties or so ascertained as aforesaid, or otherwise according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

When the Suit may be disposed of at the First Hearing.

CX.

If the Court shall be satisfied that the questions of law or fact on which the parties are at issue do not require any further argument or proof than such as the parties or their Attorneys or Vakeels can at once supply, the Court may at once decide such question, if the summons have been issued for a final disposal of the cause; and if the summons have been issued for a settlement of issues only, the Court may in like manner at once decide the question, if the parties consent thereto.

If the summons was for a final disposal of the case, or the parties consent, suit may be decided at first hearing;

CXI.

When the summons has been issued for the settlement of issues only, if the parties or either of them do not consent that the Court shall at once decide the questions of law or fact on which they may be at issue, or if the questions of law or fact on which they are at issue require further argument or proof than the parties or their Attorneys or Vakeels can at once supply, the Judge shall postpone the further hearing of the cause, and shall fix a day for the production of further evidence, or for further argument, as the case may require.

otherwise, the hearing of the case to be postponed.

Of Adjournments.

CXII.

The Judge may, at any stage of the suit, grant time to the parties, or either of them, and may from time to time adjourn the hearing of the cause as he may think fit; and in all such cases the party applying for time shall pay the costs occasioned by such adjournment, unless the Judge shall otherwise direct.

Judge may grant time, or adjourn to a future day.

CXIII.

If on any day to which the hearing of the cause may be adjourned, the parties or either of them shall not appear in person or by Attorney or Vakeel, the Court may proceed to dispose of the cause in the manner specified in Article LXXXI. or Article LXXXIV., as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

How the Judge is to proceed if the parties fail to appear on the day fixed.

Of Summoning Witnesses.

CXIV.

The parties, or their Attorneys or Vakeels, may at any time obtain, on application to the Clerk or other proper officer of Court, summonses to witnesses or other persons, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in such summons any number of names may be inserted.

Application for Summons.

CXV.

The person applying for a summons shall pay to the Clerk or proper officer of the Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness, or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to the rules, if any, established by the Court to which such Court shall be immediately subordinate. The sum so paid to the officer shall be tendered to the witness or other person, at the time of serving the summons, if it can be served personally. In addition to the sum so paid, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary to defray his travelling and other expenses, and also the expenses of his detention under the summons, and in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, and the witness or other person summoned shall not be bound to give evidence, or produce any document until such sum shall be paid.

Expenses of witnesses to be paid before issue of summons.

CXVI.

Time and place of attendance to be specified in summons.

Every summons for the attendance of any witness or other person shall specify the time and place at which he is required to attend, and also the purpose for which his attendance is required; and any particular document or documents which the witness or other person may be called on to produce shall be described in the summons with convenient certainty. The witness shall further be required to produce all deeds and documents in his possession relating to the subject of the suit, and shall be bound to produce them unless he shall satisfy the Judge that the notice to produce did not give him sufficient information.

CXVII.

Summons to produce a document or to assist in framing issues.

Any person, whether a party to a suit or not, may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced, instead of attending personally to produce the same.

Service of Summons on a Witness.

CXVIII.

How the summons shall be served.

Every summons shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

CXIX.

Service to be on the witness, or a member of his family.

Whenever it may be practicable, the service of the summons shall in all cases be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult member of his family residing with him.

CXX.

When the summons cannot be served it is to be returned to the Court.

When the person required to attend cannot be found, and there is no adult member of his family on whom the summons can be served, the serving officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it.

CXXI.

Time and manner of service to be endorsed on the summons.

The serving officer shall in all cases in which the summons has been served endorse on the original summons the time and the manner where and how it was served.

CXXII.

How a summons on a witness who resides in another jurisdiction is to be served.

If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the Clerk or proper officer of the Court in which the suit is pending, to the Clerk or proper officer of the Court within whose jurisdiction the person required to attend may reside; and the Clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the bailiff or other proper officer of his own Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be transmitted to the Clerk or proper officer of the Court from whence it originally issued.

CXXIII.

When a witness absconds his property may be attached.

If any person for whose attendance either to give evidence or to produce a document, a summons shall be issued, cannot be served in either of the ways herein-before specified, the Court on being certified thereof by the return of the serving officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness absconds or keeps out of the way, may cause a proclamation requiring the attendance of

such person to give evidence, or produce the document, at a time and place to to be named therein, to be affixed in some conspicuous place upon or near to his house or place of abode; and if such person shall not attend at the time and place to be named in such proclamation, his property (real and personal), to such amount as the Court shall deem reasonable, (but subject to the same limitation as to the articles exempt from attachment, as in case of attachment for arrears of rent,) shall be liable, under an order of the Court, to attachment and sale.

CXXIV.

How the Court is to proceed with the witness on his appearance.

The cost of the attachment shall be borne in the first instance by the party applying for it, and the Court issuing the summons and attachment shall not proceed to sale of the property if the witness shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not notice of the proclamation in time to attend at the time and place named therein. Upon the appearance of such witness the Court shall make such order in regard to the costs of the attachment as it shall deem fit. If the witness appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not such a notice of the proclamation as aforesaid, it shall be in the discretion of the Court to order the property attached, or any part thereof, to be forfeited and sold for the purpose of satisfying all costs incurred in consequence of such default, or absconding or keeping out of the way, and any fine which the Court may deem fit to impose upon the witness under the provisions of Article CCIX., or the Court may order the property to be released from the attachment upon payment of such costs and fine as aforesaid.

Of the Examination of Parties as Witnesses.

CXXV.

Parties may be examined.

When a party to a suit appears in person at any hearing of the cause, he may be examined as a witness either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

CXXVI.

Special application to be made for the examination of a party as a witness.

If any party to the suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his Attorney or Vakeel, make a special application to the Court for an order that the party do attend, and shall show, to the satisfaction of the Court, sufficient grounds in support of such application, otherwise a summons shall not be issued.

CXXVII.

The Court may first issue a notice to show cause.

The Court, if it think fit so to do, may, before making such order, cause notice to be given to the party or his Attorney or Vakeel, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient cause, enlarge the time for such application.

CXXVIII.

May receive a written declaration in support of the cause shown.

In support of the cause shown, the Court shall receive any declaration in writing of the party, if signed by him and delivered into the Court by himself or his Attorney or Vakeel.

CXXIX.

If no sufficient cause be shown, summons to issue.

If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

Attendance of Witnesses, and Consequence of Non-attendance.

CXXX.

Persons summoned to give evidence must attend.

Any person who shall be summoned to appear and give evidence in a cause shall be bound to attend at the time and place named for that purpose.

CXXXI.

Consequences of non-attendance by a witness not a party to the suit.

If any witness, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Article CXIX., shall, without lawful excuse, fail to comply with such summons, the Court may issue an order to the bailiff or other proper officer to apprehend and bring the witness before the Court. If any such person abscond or keep out of the way, so that he cannot be seized or brought before the Court, his property shall be liable to attachment and sale in the same manner as is provided in Article CXXIII. with respect to a witness on whom the service of a summons cannot be effected.

CXXXII.

Consequences of refusal to give evidence.

If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition as herein-after required, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to sign his deposition, or to produce the document; after which, in the event of his persisting in his refusal, the Court may proceed to deal with him according to the provisions of Article CCIX.

CXXXIII.

Consequence of non-attendance or refusal of a party.

If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document shall, without lawful excuse, fail to comply with such order, or, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition, or to produce any document in his custody or possession, named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, as in case of default, or give such other order in relation to the cause as the Court may deem proper in the circumstances of the case.

CXXXIV.

Any person present in Court may be called upon to give evidence though not summoned.

Any person present in Court, whether a party or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be dealt with for any refusal to obey the order of the Court.

When and how Witnesses are to be examined.

CXXXV.

Witnesses must be examined at the hearing of the cause in open Court in the presence of the Judge.

On the day appointed for the hearing or trial of the cause, or on some other day to which the hearing or trial may be adjourned, the evidence of the attending witnesses shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal may lie to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over to the witness, and signed by him in the presence of the Judge and of the parties to the suit, or their Attorneys or Vakeels. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be in the discretion of the Judge to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his Attorney or Vakeel shall require it. If any question put to a witness be objected to by either of the parties, or their Attorneys or Vakeels, and the Court shall allow the same to be put, the question and answer

shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of the witness while under examination. In cases where an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the Judge shall make a short memorandum of the substance of what each witness may have deposed at the trial of the cause, and such memorandum shall be written and signed with his own hand, and shall form part of the record.

CXXXVI.

If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party, at any time after summons issued, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the other party if the day be fixed in his absence. The witness shall be examined, and his deposition shall be taken down in writing in the manner herein-after prescribed; and the deposition so taken down may be read in evidence at the trial, or any hearing of the cause.

But a witness may for special cause be examined immediately.

CXXXVII.

All witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their giving evidence, and they shall, upon such examination, be bound to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Witnesses to be examined without oath, affirmation or warning.

Of Commissions to examine absent Witnesses and make local Inquiries.

CXXXVIII.

When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Judge to be personally examined, or is a person exempted by law absolutely, or at the discretion of the Court, by reason of rank, sex, or other special cause, from personal appearance in Court, the Court may, on the application of any of the parties to the suit, order a Commission to issue for the examination of the witness on interrogatories or otherwise, and may, by the same or any subsequent order or orders, give all such directions for taking such examinations, as well within the jurisdiction of the Court wherein the suit shall be pending as without, as may appear reasonable and just. If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any officer of the Court, or to any subordinate Court, or to any other person or persons whom the Judge may think proper to appoint. If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the local jurisdiction of the High Court, but within its general jurisdiction, the Commission shall ordinarily be issued to the Court within whose particular jurisdiction the witness may reside, or which can most conveniently execute the same; but under special circumstances, which may appear to render a different course expedient, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

Cases in which Court may issue a Commission to examine witnesses.

Where the witness is within the Court's jurisdiction.

Where the witness is beyond the Court's jurisdiction.

CXXXIX.

If the witness be resident within the local jurisdiction of the High Court, the Commission shall ordinarily be issued to the Moonsiff of Agra, but may, under special circumstances, be directed to any other person or persons whom the Court issuing the Commission may think proper to appoint.

Where the witness is within the local jurisdiction of the High Court.

CXL.

Where the evidence is required of a witness who is resident at some place beyond the general jurisdiction of the High Court, the application for a Com-

Where the witness is beyond the general jurisdic-

tion of the High Court.

mission to examine the witness must in all cases be made to the High Court. If the suit in which the evidence of the witness is required be pending in some other Court than the High Court, the application must be accompanied by a certificate from the Court in which the suit is pending, that the application is made with its permission. In all cases of an application to the High Court for a Commission to examine a witness, the Commission may be issued to any person or persons whom the High Court may think proper to appoint; and whenever a Commission is issued from the High Court for the examination of a witness in a suit pending in any other Court the Commission shall be made returnable to the Court in which the suit is pending.

CXLI.

Commission to be returned with the deposition of the witnesses.

After the Commission has been duly executed, it shall be returned, together with the deposition or depositions of the witness or witnesses who may have been examined thereunder, to the Court out of which the Commission issued (except as in the last preceding article mentioned), unless otherwise directed by the order for issuing the Commission, and then it shall be returned in terms of such order, and it shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by law absolutely, or at the discretion of the Court, from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the Court, at its discretion, to authorize the reading of the deposition. And all depositions taken under any Commission which may be issued as aforesaid, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.

When depositions may be read in evidence.

CXLII.

Commission for local investigations.

In suits regarding lands or houses, or their limits or boundaries, in which the Court may deem a local investigation to be requisite or proper, for the purpose of elucidating the matters in dispute, the Court may issue a Commission to any person whom it may think proper to appoint, directing him to make such investigation, and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine, not only such witnesses as may be produced to him by the parties or any of them, but any other person or persons whom he may think proper to call upon to give evidence in the matters referred to him; and persons not attending on the requisition of the Commissioner, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the Commissioner during the investigation of the matters committed to him, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the Commissioner, as they would incur for the same offences in suits tried before the Court; provided that the Commissioner shall report the order to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order. The Commissioner shall, after such local inspection as he may deem necessary, and after reducing to writing, in the manner herein-before prescribed for taking the depositions of witnesses in the presence of the Judge, the depositions of such witnesses as he may have examined, shall return the depositions, together with his report in writing, subscribed with his name, to the Court issuing the Commission. The report and depositions shall be taken as evidence in the cause, and shall form part of the record; but it shall be competent to the Court, or to the parties or any of them, with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him, or mentioned in his report, or the manner in which he may have conducted the investigation. The Court may order such sum to be paid to the Commissioner as

The report of the Commissioner to be taken as evidence in the cause; but he may be examined in person.

may be thought reasonable for his trouble and expenses, and the sum so ordered to be paid shall be considered as costs in the cause, unless the Court shall otherwise direct.

CXLIII.

A Commissioner may be appointed to investigate and adjust accounts.

In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Judge to appoint any person whom he may think proper to be a Commissioner, for the purpose of making such investigation or adjustment, and to direct that the parties or their Attorneys or Vakeels shall attend upon the Commissioner during such investigation or adjustment. In all such cases the Judge shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioners are to be received in evidence in the case, unless the Judge may have reason to be dissatisfied with them, in which case he will make such further inquiry as may be requisite, and will pass such ultimate judgment or order as may appear to him to be right and proper in the circumstances of the case.

Of Judgment and Decree.

CXLIV.

When judgment is to be pronounced.

When the exhibits have been perused and considered, and the witnesses examined, and the parties have been heard in person, or by their respective Advocates, Attorneys, or Vakeels, the Court shall pronounce its judgment, either immediately or on some future day, of which due notice shall be given to the parties or their Attorneys or Vakeels.

CXLV.

Rights of all the heirs to be declared in cases of succession.

In any suit concerning the succession or right of inheritance to any zemindary, talook, land, house, or other real property, where more persons than one would, by the Hindoo or Mahomedan Law, be entitled to a portion of the estate, the decree shall adjudge the property, as far as may be practicable, among all the heirs in the proportions to which they may be respectively entitled.

CXLVI.

The Judge to state his decision on each issue;

In all suits in which issues have been framed the Judge shall state his finding or decision on each separate issue.

CXLVII.

and to direct by whom costs are to be paid.

The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the Judge shall have full power to award and apportion costs, in any manner he may deem proper, except in so far as is herein otherwise provided.

CXLVIII.

What is included in costs.

Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the decree that may have been passed therein, such as the expense of summoning the Defendants, fees of Advocates, Attorneys, or Vakeels, or officers of court, and subsistence money to peons or other persons employed in serving processes, charges of witnesses, and sums awarded to Commissioners either in taking evidence or in local investigations.

CXLIX.

How the judgment is to be delivered

The judgment shall be pronounced in open Court, and in all Courts except the High Court it shall be imperative on the Judge to state the reasons for his judgment at the time of pronouncing the same. The judgment shall in all cases be written out and signed by the Judge. The judgment shall be written out in the vernacular language of the Judge, except when the Judge, being

a native of the country, and sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, may prefer to write his judgment in English, and in that case the judgment may be written out in the English language. Whenever the judgment is written out in any other language than that which is in ordinary use in the proceedings before the Court, the judgment shall be translated into such language so being in ordinary use in the Court, and the translation shall also be signed by the Judge.

CL.

What the decree is to contain.

The decree shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, the title of every exhibit produced in the cause, and the names of any witnesses who may have been examined, and a distinct statement of the issues when any may have been framed. It shall also contain an exact copy of the ordering part of the judgment or a translation thereof in the language in ordinary use in proceedings before the Court, and shall be sealed with the seal of the Court and signed by the Judge.

CLI.

Copies of the decree to be furnished gratuitously.

Copies of the decree shall be furnished gratuitously to the parties or their Attorneys or Vakeels, on application to the Clerk or other proper officer of the Court.

CLII.

When a native officer or soldier is a party to the suit, a copy of the decree is to be sent to his commanding officer.

When a native officer or soldier in the service of the Government is a party to a suit, and is not present at the time of its decision, an authenticated copy of the decree shall be transmitted by the Court to the commanding officer of the corps or detachment to which such native officer or soldier shall belong, for the purpose of its being communicated to him.

CHAPTER III.

Execution or Enforcement of Decrees.

CLIII.

How decrees are to be enforced.

If the decree be for land or other immoveable property, the same shall be delivered over to the party to whom the same may have been adjudged; if the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by imprisonment of the party adjudged to perform the same, or by attaching his or their property, and keeping the same under sequestration until further order of the Court, or by both imprisonment and sequestration if necessary; if the decree be for money, it shall be enforced by the imprisonment of the party against whom the same may have been adjudged, or the attachment and sale of his property, or by both if necessary; and if such party be other than a Defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this Chapter against a Defendant.

Application for Execution.

CLIV.

Application for execution how to be made.

The application for execution of a decree shall be made to the Clerk or other proper officer of the Court by the applicant in person, or through his Attorney or Vakeel in the cause, or some other Attorney or Vakeel duly appointed to act for him in that behalf, in manner herein-before mentioned.

CLV.

If the person by or against whom the decree has been

If any person in whose favour a decree has been passed shall die or become bankrupt or insolvent after such decree, and before execution shall be fully had thereon, application for execution of the decree may be made by or on behalf

of the legal representative or representatives, or the assignee or assignees, of the person so dying or becoming bankrupt or insolvent as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly. And, in like manner, if any person against whom a decree has been passed shall die after such decree, and before execution has been fully had thereon, application for execution thereof may be made against the legal representative or representatives or the estate of the person so dying as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly.

obtained shall die, or become bankrupt or insolvent, application for execution may be made by or against his legal representative.

CLVI.

Particulars to be given with the application.

The application for execution of a decree shall be accompanied with the following particulars distinctly written in the language in ordinary use in proceedings before the Court, viz., the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; the amount of the debt or damages due upon it, if the suit were for money; the amount of costs, if any were awarded; the name of the person or persons against whom the enforcement of the decree is sought; and the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, the arrest and imprisonment of the person or persons named, or attachment of his or their property.

CLVII.

Further particulars when the application is for an attachment of immoveable property.

When the application is for an attachment of the defendant's land or other immoveable property, it shall also be accompanied with an inventory or list of such property, containing such a description of each item thereof as may be sufficient to identify it, together with a specification of the Defendant's share or interest therein, to the best of the applicant's belief, and so far as he has been able to ascertain the same. And where the property is an estate paying revenue to Government, or any portion of such estate, the application for an attachment shall be accompanied with an authenticated extract from the register of the collector's office, specifying the jummah of such estate, and the names and shares of the registered proprietors.

CLVIII.

The application for an attachment of moveable property may be special or general.

Where the application is for an attachment of the Defendant's moveable estate, or any part thereof, or of debts or money belonging to him, it may also be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description of each item thereof; or the Plaintiff may apply for a general attachment of the Defendant's moveable estate, debts, and money, wheresoever the same can be found, to the amount of the judgment and costs.

CLIX.

Duty of the officer on receiving the application.

The Clerk or other proper officer of the Court, on receiving any application for execution of a degree, accompanied with the particulars above mentioned, or such of them as may be applicable to the case, shall compare the same with the original decree contained in the record of the cause; and if they shall be found to correspond therewith, shall enter a note of the application, and the date on which it was made, in the register of the suit. If the particulars shall not be found to correspond with the original decree, the Clerk or other proper officer shall either return them for correction to the person making the application, or shall, with the consent of such person, make the necessary correction himself.

Measures required in certain Cases preliminary to the Issue of the Warrant.

CLX.

In certain special cases, the Defendant may be called on to show cause.

If an interval of more than one year shall have elapsed between the date of the decree and the application for its execution, or if the enforcement of the decree be solicited by or against individuals being heirs or representatives of the

original parties in the suit, or against one only of several individuals equally affected by the decree, or if it shall appear that the matter in dispute has been adjusted by the parties subsequently to the decree, either by the voluntary surrender of the thing or property adjudged, or by the payment of the sum decreed, either in whole or in part, or by giving security for the same, or entering into an instalment bond or otherwise, or where the decree is for the delivery of a specific moveable, or for the specific performance of a contract or any other particular act, and the application is for the enforcement thereof by imprisonment of the party adjudged to deliver or perform the same, the Clerk or other proper officer of the Court shall, instead of proceeding to the immediate enforcement of the decree, submit the application for execution thereof to the Judge; and it shall be competent to the Judge, if he shall think proper, to issue a notice to the party against whom execution may be sued for, requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him. If upon such notice the party shall not attend in person or by Attorney or Vakeel, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall extend in person or by Attorney or Vakeel, and shall offer any objection to the enforcement of the decree, the Court shall issue such order as in the circumstances of the case may appear to be just and proper.

CLXI.

Application for a general attachment of moveable property must be referred to the Judge.

Where the application is for a general attachment of the moveable estate of the Defendant, the Clerk or other proper officer of the Court shall submit the application to the Judge, and it shall be competent to the Judge, if he shall think proper, (and if the Plaintiff shall in person, or by his agent, give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person or persons than the Defendant,) to direct that an order do issue for the attachment of the Defendant's moveable property wherever the same may be found, to the amount of the judgment and costs, or such other sum as may be specified in such order.

CLXII.

The Judge may summon and examine the Defendant as to his means of payment.

Before granting the order for a general attachment, or upon the application of the Plaintiff at any time after judgment and before complete execution of the decree, the Judge may summon the Defendant and examine him as to his property and his means of satisfying the judgment, in the same way as if he were not a party to the suit.

CLXIII.

If the Judgment be by default and for land, a proclamation for claimants to be issued before execution.

If the decree be for a zemindary, talook, land, house, or other real estate or property, or any share therein, and the judgment shall have been passed against the Defendant or Defendants by default, the Clerk or other proper officer of the Court, before proceeding to execute the decree, shall issue a proclamation calling upon all persons having any claim to the property in question to appear on a certain day, to be specified in the proclamation, and which shall not be later than fifteen days from the date of the application for the execution of the decree, either in person or by an Attorney or Vakeel, and be prepared to state their claims to the Court, and support them by sufficient evidence.

CLXIV.

How the proclamation is to be published.

The proclamation shall be read aloud by the bailiff or other proper officer in some public place within the limits of or adjacent to the zemindary, talook, land, house, or other real estate or property, for which, or a share in which, the judgment by default may have been given, and a copy thereof shall be fixed up in some conspicuous part of the Court House; and if the judgment by default shall have been given by any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the judgment may have been given.

CLXV.

If no claimant to the property shall appear on the day fixed in the proclamation, either in person or by Attorney or Vakeel, to offer any objection to the execution of the decree, the Court shall order the decree to be executed in the same manner as if the judgment had not been given by default.

If no claimant appear, execution to issue.

CLXVI.

If on the day fixed in the proclamation, any claimant to the property shall appear, in person or by Attorney or Vakeel, and shall offer any objection to the enforcement of the decree, the Court shall proceed forthwith to investigate the same, in the like manner and with the like powers as if the claimant had been originally made a Defendant to the suit, but shall restrict its inquiry to the fact of possession only; and if it shall appear to the satisfaction of the Court, that the zemindary, talook, land, house, or other estate or property mentioned in the decree was not in the possession of the party against whom the judgment by default may have been given, nor in the occupancy of ryots, or cultivators, or other persons, paying rent to him at the date of the commencement of the suit, the Judge shall pass an order to stay execution of the decree, and shall call upon the party applying for execution thereof to show cause why the judgment should not be set aside and cancelled. And if the party shall fail to show cause to the satisfaction of the Court, the Court shall forthwith cancel the said judgment, and an entry of the cancellation shall be made in the Register of the suit. If it shall appear to the satisfaction of the Court that the zemindary, talook, land, house, or other estate or property mentioned in the decree, was in the possession of the party against whom the judgment by default was given, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the date of the commencement of the suit, it shall direct the decree to be executed in the same way as if the judgment had not been by default. The decision of the Court in the investigation mentioned in this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Investigation of claims, how to be made.

Issue of the Warrant.

CLXVII.

When the Clerk or other proper officer of the Court is satisfied as to the particulars above referred to, and all necessary preliminary measures have been taken when any such are required, he shall forthwith prepare and issue, under the seal of the Court, the proper warrants for the execution of the decree.

Warrant to be under seal of Court.

CLXVIII.

Every warrant for execution of decree shall bear date on the day on which the same shall be issued, and shall be sealed with the seal of the Court, and delivered to the bailiff or other proper officer. A day shall be specified at the bottom of the warrant on or before which it must be executed, and the bailiff or other proper officer shall in all cases endorse upon the order the day and the manner in which it was executed, and shall return it with such endorsement to the Court from which it issued.

Latest day of execution to be written in warrant, and time and manner of execution to be endorsed.

Of the Execution of Decrees for Immoveable Property.

CLXIX.

If the decree be for a house or other immoveable property not in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by putting the party to whom the house or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

How immoveable property is to be delivered when not in the occupancy of ryots.

CLXX.

How is it to be delivered when in the occupancy of ryots.

If the decree be for land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, at some convenient place or places, the substance of the decree in regard to the property.

CLXXI.

Obstruction to execution of decree for land.

Defendant may be summoned if suspected of obstruction.

If the decree shall be for the possession of a zemindary, talook, land, house, or other real estate or property, or share therein, and the party or parties in whose favour the same shall have been adjudged shall be resisted or obstructed by any person or persons in obtaining effectual possession thereof, and shall make an application to the Court, either in person or by Attorney or Vakeel, at any time within one month from the date of the officer's return to the warrant for execution of the decree, the Court shall fix a day for investigating into the matter of his complaint, and if reasonable ground shall be shown to the satisfaction of the Court for believing that the obstruction or resistance in question has been occasioned by the Defendant or Defendants, or by some other person or persons at his or their instigation, the Court shall issue a summons to the Defendant or Defendants calling upon him or them to appear, on the day appointed for the investigation, to attend and give evidence.

CLXXII.

Court how to proceed if he cannot be found or fails to attend.

In all cases in which a summons shall be issued for the attendance of a party at any time or for any purpose after judgment, the summons shall be served in the manner herein-before prescribed for the service of a summons upon a witness, and if he cannot be served in either of the ways specified in Article CXIX., or if after being served he shall, without lawful excuse, fail to comply with such summons, or attending, or being present in Court, shall, without lawful excuse, refuse to give evidence, he shall be liable to be dealt with in the same way as if he were not a party to the suit, and as any other person would be dealt with in the like circumstances under Articles CXXIII., CXXXI., and CXXXII. respectively.

CLXXIII.

How Defendant may be dealt with if he persists in obstructing the Plaintiff.

If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was caused or occasioned by the Defendant or Defendants, or by any other person or persons at his or their instigation, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree by the Defendant or Defendants, or some person or persons at his or their instigation, the Court may, without prejudice to the operation of the provisions of Article CCIX., commit the Defendant or Defendants to close custody until further orders.

CLXXIV.

Obstruction by a *bonâ fide* claimant.

If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person or persons claiming *bonâ fide* to be in possession of the estate or property on his own account, or on account of some other person or persons than the Defendant or Defendants to the suit, the Court shall, without prejudice to the provisions of Article CCIX., proceed to investigate the claim in the same manner and with the like powers as if the claimant had been made originally a Defendant to the suit, and shall pass such order for staying execution of the decree, or executing the same, as it may deem proper in the circumstances of the case; and the order of the Court shall not be subject to appeal, but the party against whom the same may be pronounced shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Of the Execution of Decrees for Money by Attachment of Property.

CLXXV.

If the decree be for money, and the person or persons applying for execution thereof shall desire that the amount shall be levied from the estate and property of the person or persons against whom the same may have been pronounced, the Court shall cause the attachment of any lands, houses, goods, chattels effects, money, bank notes, cheques, bills of exchange, promissory notes, hoondees, Government securities, bonds, or other securities for money, debts, shares in the capital or joint stock of any railway, banking, or other public company or corporation, or other property whatsoever, moveable or immoveable, belonging to the Defendant or Defendants, or whether the same be held in his or their own name or names, or by another person or other persons in trust for him or them, or on his or their behalf, to the amount or value of the sum decreed and costs, or to such extent as may be deemed necesssary for the purpose of securing the satisfaction and payment of such amount and costs.

What property may be attached in execution of decree.

CLXXVI.

Where the property shall consist of goods, chattels, effects, or other moveable estate, the attachment shall be made by actual seizure, and the bailiff or other officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof. Where the property shall consist of lands, houses, or other immoveable estate, the attachment may also be made by actual seizure, but it shall be in the option of the Court, if it shall think proper, instead of directing its officer to make seizure and assume possession of the property, to issue a written order prohibiting the sale, mortgage, gift, or other transfer thereof, and all persons from receiving or taking the same by purchase, gift, or otherwise howsoever, and also prohibiting all ryots or cultivators and other tenants and occupiers of the land from paying their rents to any person or persons whomsoever, until the further order of the Court; with permission in the meantime to pay their rents into Court, to the treasurer or other proper officer who may be authorized to receive or grant receipts for the same. Where the property shall consist in whole or in part of debts, or of shares in any railway, banking, or other public company or corporation, the attachment shall be made in all cases by a written order of the Court, prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person or persons whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving payment of any dividends thereof until such further order. Where the property shall consist in or whole in part of money standing in the name of the Defendant or to his account, and in deposit in any Court of Justice or office of Government, or of interest on Government paper, the attachment shall be made by a notice to such Court or office requesting that the money or interest may be held, subject to the further orders of the Court by which the notice may be issued.

The attachment is to be made by seizure when the property is goods and chattels; by seizure or by prohibitory order when it is real estate; by prohibitory order only when it is debts; by notice when it is money in deposit in a Court of Justice or Government office.

CLXXVII.

In the case of lands, houses, or other immoveable property, the written order shall be read aloud at some place on or adjacent to the same lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court House; and if the lands, houses, or other immoveable property are situated beyond the limits of the town of Calcutta, a copy of the written order shall also be fixed up in the cutchery of the collector of the zillah in which the lands, houses, or other immoveable property may be situated. In the case of debts, the written order shall also be fixed up in some conspicuous part of the Court House, and copies of the written order shall be sent by post to each individual debtor. And in the case of shares in the capital or joint stock of any railway, banking, or other public company or corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court House, and a copy of the order shall be sent to the manager, secretary, or other proper officer of the company.

When the attachment is by prohibitory order, how the order is to be made known.

CLXXVIII.

All private alienations of property under attachment to be null and void.

After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property or shares attached, whether by sale, gift, or otherwise, and any payment of the debt or debts or dividends to the Defendant or Defendants, during the continuance of the attachment, shall be null and void.

CLXXIX.

The Court may direct money or bank notes to be paid to the Plaintiff, or other attached property to be made over to him at a reasonable price, or sold by public auction.

In all cases of attachment under the preceding articles, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank notes, or a sufficient part thereof, shall be paid over and delivered to the party or parties applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank notes, so far as may be necessary for the satisfaction of the decree, shall be transferred and delivered to the party or parties applying for execution of the decree, if he or they shall be disposed to accept the same in satisfaction or part satisfaction of the amount decreed, and costs, at the market value or such price as the Court may deem fair and reasonable; or that any part of the property so attached shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party or parties.

CLXXX.

Where the property consists of debts or real estate a manager may be appointed.

Where the property attached shall consist of debts due and owing to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable estate or property, it shall further be competent to the Court to appoint a manager of the said estate or property, with power to sue for and compound for the debts, and to collect the rents or other receipts and profits, or to raise money by mortgage or conditional sale of the land or other immoveable property, and to make and execute such deeds or instruments in writing as may be necessary or requisite for the purpose, and to pay and apply the same rents, profits, or receipts, or money so to be raised, towards the payment and satisfaction of the amount of the decree and costs; and in any case in which a manager shall be appointed, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

CLXXXI.

Attachment to be released after full satisfaction of the decree.

When full satisfaction shall be made of the amount decreed and costs, with all charges and expenses which may be incurred by the said attachment, or the same shall be otherwise paid and satisfied by the Defendant or Defendants, the attachment shall be forthwith released; and if the Defendant or Defendants shall desire that due intimation shall be given of such release, the order for the release of the attachment shall, at his or their expense, be proclaimed and intimated in the same manner as herein-before prescribed for the proclamation of the attachment.

Of Claims to attached Property.

CLXXXII.

How claims and objections to sale of attached property are to be investigated.

In the event of any claim being preferred to or objection offered against the sale of lands or any other real or personal property which may have been attached in execution of a decree, or under and by virtue of any order for sequestration which may be passed before judgment, as not belonging to the Defendant or Defendants, and consequently not liable to be sold in execution of a decree against him or them, the Court shall, subject to the proviso contained in the next succeeding article, proceed to investigate the same in the same manner and with the like powers as if the claimant had been originally made a Defendant to the suit, and also with such powers, as regards the summoning of the original Defendant or Defendants, as are contained in Articles CLXXI. and CLXXII. And if it shall appear to the satisfaction

of the Court that the land or other real or personal property so advertised to be sold in execution of the decree was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, or that being in the possession of the party himself at such time, it was so in his possession not on his own account, or as his own property, but on account of or in trust for some other person or persons, the Judge shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other real or personal property advertised to be sold in execution of the decree was in possession of the party against whom execution is sought, as and for his own property, and not for or on account of any other person or persons, or was in the possession of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, the Court shall pass an order disallowing the claim, and shall direct the decree to be executed. The order which may be passed by the Court under this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

CLXXXIII.

Claims and objections should be preferred at the earliest opportunity.

The claim or objection shall in all cases be preferred or made at the earliest opportunity to the Court that shall have ordered the attachment; and if the property to which the claim or objection applies shall have been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding article; provided that if it shall appear that the preferring or making of the claim or objection has been designedly and unnecessarily delayed, with a view to obstruct the ends of justice, the sale shall not be postponed, and the claimant shall be left to prosecute his claim after the sale by a regular suit.

Of Sales in Execution of Decrees.

CLXXXIV.

Sales to be by public auction; exception as to Government paper.

Sales in execution of decrees shall be conducted by the proper officer of the Court, and shall in all cases be made by public auction in manner herein-after mentioned, except where the property to be sold shall consist of Government securities; and with respect to such securities, it shall be competent to the Court to authorize its officer, or any other person whom it may think proper to appoint, to sell and dispose of the same through a broker at the market rate of the day, and, if the endorsement of the party in whose name any such security is standing shall be required to transfer the same, to endorse such security thus "A.B. by C.D. by order of" (as the case may be), and in the meantime, until such sale, to receive any interest which may become due thereon, and to sign receipts for the same; and any endorsement which shall be made as aforesaid shall be as effectual to pass the said securities, and to give a good title to the holder thereof, and any receipt which shall be signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or signed by the party himself or his constituted Attorney.

CLXXXV.

How other property taken in execution must be sold.

In all cases of intended sale, whether of moveable or immoveable property, in execution of any decree or other judicial process, where the property shall not consist of Government securities, and in all sales of Government securities, when the Court shall direct that the same be sold by public auction, a proclamation of the intended sale, with particulars of the time and place of sale, of the property to be sold, including the jummah of the estate when the property to be sold is an estate paying revenue to Government, or any portion of any such estate, and of the amount for the recovery of which the sale is ordered, shall be made in the current language of the country, and at Calcutta it shall also be made in the English language, at least thirty days before the appointed day of sale, exclusive of the day of sale, and of the date on which the procla-

mation may be ordered. Such proclamation shall be made, in Calcutta, in the mode that has been usual in the case of sales by the sheriff, and at other places in the usual mode, by beat of drum, on the spot where the property is attached; and a written notification to the same effect shall be affixed in some conspicuous place in the Court of the Judge who shall have ordered the sale, and also in the Court of the Zillah Judge, where the Judge who ordered the sale is subordinate to the Zillah Judge. When the attachment shall have taken place at some beyond the limits of the ordinary original jurisdiction of the High Court, the written notification shall also be affixed in some conspicuous place within the town or village in which the attachment may take place, and the cutcherry of the collector, and also in the Court of the local moonsiff.

CLXXXVI.

Nothing but the right title and interest of the Defendant guaranteed to the purchaser.

In all cases of a public sale of property in execution of a decree, it shall be clearly explained to the bidders at the sale, that nothing is guaranteed to them in the land or other property sold beyond the rights and interests therein of the individuals answerable for the amount of the decree or other process in execution of which the sale is made.

CLXXXVII.

The process for attachment and sale may in certain cases be issued simultaneously.

The usual process for attachment and sale in such cases, when the property to be attached consists of goods, chattels, or other personal estate other than debts, may either be issued successively or simultaneously, as the Judge directing the sale may in each instance think proper; but no sale shall in any instance take place without a previous proclamation for the period specified in Article CLXXXV.; and any material irregularly in the sale which may be established on investigation to the satisfaction of the Court by whom the sale may have been ordered, shall be sufficient to invalidate the sale, provided that an application objecting to the sale on the ground of such irregularity be made to the Court by the party objecting thereto, either in person, or by Attorney or Vakeel, within one month after the sale.

CLXXXVIII.

The sale, if not objected to for irregularity, or if the objection is disallowed, shall become absolute.

If no such application as is mentioned in the last preceding article be made within one month after the sale, or if such application shall be made and the objection shall be disallowed, the Judge shall pass an order confirming the sale; and in like manner, if such application shall be made, and if the objection be allowed, the Judge shall pass an order setting aside the sale for irregularity. The order which may be passed in either case, unless appealed from, and if appealed from then the order passed on the appeal, shall be final, and the party against whom the same has been given shall be precluded from bringing a fresh suit for establishing his claim.

CLXXXIX.

Certificate to be granted to the purchasers of land.

After the sale shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the Defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest, to all intents and purposes whatsoever, any law or practice to the contrary thereof notwithstanding.

CXC.

And delivery made of property sold as far as practicable.

Where the property sold shall consist of goods, chattels, or other personal estate of which seizure has been made, the same shall also be delivered to the purchaser or purchasers thereof; and where it shall consist of lands, houses, or other immoveable property, the right, title, and interest of the Defendant therein shall, as far as practicable, be delivered to the purchaser or purchasers thereof by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaining by beat of drum, at some convenient place or places, to the occupants thereof, that the right, title, and interest of the Defendant or Defendants therein has been transferred to the purchaser or purchasers.

CXCI.

Whenever a public sale is set aside as invalid under Article CLXXXVII., or on any account whatever, the purchaser shall be entitled to receive back his purchase money on restoring any property delivered over to him, with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

If the sale be set aside price to be returned to purchaser.

Of the Execution of Decrees by Imprisonment.

CXCII.

When a Defendant under a decree is committed to prison in execution thereof, the Judge shall fix whatever monthly allowance he shall think sufficient for his subsistence, not exceeding   per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper officer of the Court, or of the gaol where the defendant may be in custody, by monthly payments in advance, on or before the 1st day of each month; the first payment to be made on the day of imprisonment for such portion of the current month as may remain unexpired.

Subsistence-money of a Defendant in gaol how fixed and furnished.

The blank in this article is left to be filled up by the local government.

CXCIII.

A Defendant will be released at any time on the decree being fully satisfied, or at the request of the person or persons at whose instance he may have been imprisoned, or on such persons omitting to pay the allowance as above directed, for the space of twenty-four hours after it has become due; and further, his imprisonment on account of the decree which occasioned it shall not, in any case, exceed two years.

Imprisonment for debt limited to two years.

CXCIV.

Sums disbursed by a Plaintiff for the subsistence of a Defendant in gaol shall be added to the decree, and shall be recoverable from his property under the ordinary rules; but the Defendant shall not be detained in custody or arrested on account of such disbursements.

Subsistence-money to be added to amount of decree.

CXCV.

Any person in confinement under a decree who is not entitled to the benefit of any Act for the relief of insolvent or bankrupt debtors in India, may at any time procure his enlargement by making an application to the Judge to that effect, and furnishing in writing a full and fair account of all his property of whatever nature, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him, and of the places respectively where such property is to be found, and moreover assigning the whole of such property to such person as the Court may direct, or such part thereof as may be sufficient for the satisfaction of the decree. In such case the Judge shall cause the Plaintiff to be furnished with a copy of the account of the Defendant's property, and call on him within a reasonable period, to be fixed by the Judge, to make proof of any fraudulent concealment or misrepresentation made by the Defendant; and on his failing to make such proof within the period specified shall cause the Defendant to be set at liberty.

Application may be made for release from confinement on a surrender of the whole of the debtor's property.

CXCVI.

But if the Plaintiff shall within the time specified, or at any subsequent period, prove to the satisfaction of the Judge that the Defendant, for the purpose of procuring the enlargement without satisfying the decree, wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith, the Judge shall, at the instance of the Plaintiff, either retain the Defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if he shall think proper, send the Defendant to the Magistrate to be dealt with according to the provisions of Clause 193 of the Penal Code.

If guilty of fraud or concealment, debtor's imprisonment may be extended to two years;

and he may be further dealt with criminally on account of his fraud.

CXCVII.

Though the Defendant be released, his property is liable for the decree.

A Defendant once enlarged shall not be again be imprisoned on account of the same decree except under the operation of the last preceding Article, but his property will continue liable, under the ordinary rules, to attachment and sale in satisfaction of the decree until the same shall be fully made.

CXCVIII.

Attaching creditor to be first paid out of property attached.

Whenever property is attached in execution of a decree, on the application of any person or persons, such person or persons shall be entitled to be first paid out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree.

Of the Enforcement of a Decree out of the Jurisdiction of the Court by which it was passed.

CXCIX.

The decrees of any Courts may be executed beyond their own jurisdiction by other Courts.

A decree which cannot be enforced or executed within the jurisdiction of the Court by which it was passed may be enforced or executed within the jurisdiction of another Court, in the manner following:

CC.

How application is to be made for such execution.

The party may apply to the Court which shall have passed such decree for a copy thereof, and also for a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, also for a copy of any order for execution of such decree that may have been passed. The Court, unless there be any sufficient reason to the contrary, shall cause such copy and certificate to be furnished; and the same shall be signed by the Judge or one of the Judges of the Court, and sealed with the seal of the Court.

CCI.

Judge certifying decree, how to describe himself.

If such Court shall be the principal Civil Court of original jurisdiction in the district, the Judge shall describe himself accordingly in the certificate, and shall also name the Court and the district.

CCII.

Certificate to pass from Chief Court of the district to Chief Court where it is to be executed.

If the Court shall not be the principal Civil Court of original juridiction in the district, the copy of the judgment, and of the order for execution, if any, and the certificate of the Judge, shall, without delay, be transmitted to the principal Civil Court of original jurisdiction in the district; and the Judge or one of the Judges of such Court shall issue a certificate under his hand and the seal of the Court, verifying the signature of the Judge of the Court in which the decree shall have been given to the documents above mentioned; and in such certificate the Judge signing the same shall describe himself as the Judge or one of the Judges of the principal Civil Court of the district, and shall also name the Court and the district.

CCIII.

Court applied to for execution, how to proceed.

All copies and certificates, which may be furnished by or transmitted to the principal Civil Court of original jurisdiction in the district in which such dereee shall have been given, shall be transmitted by such Court without delay to the principal Civil Court of original jurisdiction in the district in which the party may wish to have the decree enforced or executed; and such Court shall cause the said documents to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any Judge, unless the Court to which such documents shall be transmitted shall, under any peculiar circumstances, to be specified in an order, require the same.

CCIV.

Decree or order transmitted, to be

The copy of any decree, or of any order for execution, when filed in the Court to which it shall be transmitted, for the purpose of being executed or enforced as aforesaid, shall for such purpose have the same effect as a decree or

order for execution made by such Court, and may be enforced or executed by such Court, or any Court subordinate thereto, to which it may entrust the enforcement or execution thereof. executed as that of the Court.

CCV.

When application shall be made to any of the said Courts to enforce or execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to enforce or execute the same, according to its own rules in the like cases; and the last-mentioned Court shall take cognizance of and punish all wrongful acts or irregularities done or committed in enforcing or executing such decree; and all persons disobeying or obstructing the enforcement or execution of any such decree shall be punishable by such last-mentioned Court in the same manner as if the said decree had been pronounced by such Court. Execution how to be enforced by Court applied to.

CCVI.

An appeal shall lie from any order of a Court for enforcing or executing the decree of another Court, in the same manner, and subject to the same rules as if the decree had been originally passed by the Court making such order. What appeal from orders for execution under this Act.

CHAPTER IV.

Of Contempts and Disobedience of Orders.

CCVII.

Any Judge or Court of Justice shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their Courts, and to punish the persons committing them, as therein authorized. Disobedience of Orders, &c. under Clause 149 of the Penal Code, how punishable.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior or insulting him, or neglecting his duty.

CCVIII.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause. Contempt of Court under Clause 197.

The offence is that of insulting or interrupting a Court of Justice.

CCIX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto. Contempt of lawful Authority under Chapter IX.

Chapter IX. of the Penal Code is entitled "Contempts of the lawful Authority of Public Servants."

CCX.

Provided that Principal Sudder Ameens and Moonsiffs shall not exceed the powers of punishment conferred on them respectively as Judges of subordinate Criminal Courts, in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that when a person has been sentenced to punishment under the provisions of the last preceding article for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge or Court of Justice to remit the punishment, on the submission of the offender to the order or requisition of such Judge or Court of Justice. Ordinary powers of punishment not to be exceeded. Punishment may be remitted on submission of the Offender.

The Articles under the head of Contempts are a repetition, *mutatis mutandis*, of the Articles contained under Chapter VIII. of the Code of Criminal Procedure, and are here inserted for the guidance of the Civil Judge.

CHAPTER V.

Reference to Arbitration.

CCXI.

Reference on application of the parties.

If the parties to a suit are desirous that the matters in difference between them shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the Court at any time before final judgment for an order of reference.

CCXII.

Application how to be made.

The application shall be made by the parties in person, or through one of the Attorneys or Vakeels of the Court, specially authorized in that behalf by an instrument in writing, which shall be presented to the Judge at the time of making the application, and shall be filed with the proceedings in the cause.

CCXIII.

Appointment of arbitrators may be made by Court at the desire of parties.

If the parties cannot agree with respect to the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, or having accepted it shall refuse to act, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint some proper person or persons to be the arbitrator or arbitrators, as the case may be.

CCXIV.

Order of reference.

The Court shall fix such time as it may think reasonable for the delivery of the award, and shall by an order under its seal, in which the time so fixed shall be specified, refer to the arbitrator or arbitrators the matters in difference in the suit between the parties.

CCXV.

When the reference is to two or more, the order shall provide for difference of opinion.

If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint their own umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree as to any of these particulars, as the Court itself may determine.

CCXVI.

Power to Court to direct arbitration.

If on the day mentioned in the summons, or at any subsequent hearing of the cause, it shall appear to the Judge that the matter in dispute between the parties consists wholly or in part of matters of mere account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of Court, or to some other proper person whom the Judge may think fit to appoint, upon such terms, as to costs and the remuneration of the arbitrator, or otherwise, as the Judge shall think reasonable.

CCXVII.

Court may determine particular facts or points of law.

If it shall appear to the Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law or fact fit to be decided by the Court, it shall be lawful for the Judge to decide such question of law or fact, and his decision thereupon shall be taken and acted upon by the arbitrator as conclusive.

CCXVIII.

If action be commenced by one party to a deed of arbitration, Court may stay proceedings.

Whenever the parties to any deed or instrument in writing shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person claiming through or under him or them, shall nevertheless commence any suit against the other party or parties, or against any person or persons claiming through or under him or them, in respect of the matters so agreed to be referred or any of them, it shall be lawful to the Court in which the suit is brought, on application by the Defendant or Defendants at his or their first appearance before the Judge, in obedience to any summons that may be issued in such suit, upon being satisfied that no sufficient reason exists why such matters cannot be or

ought not to be referred to arbitration according to such agreement as aforesaid, and that the Defendant was at the time of the commencement of such suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make an order for staying all proceedings in such suit, on such terms as to costs or otherwise as to such Court may seem fit: provided always, that any such order may at any time thereafter be discharged or varied as justice may require.

CCXIX.

Powers of arbitrators.

Upon any reference by an order of Court, whether compulsory or by consent, the arbitrator or arbitrators and umpire shall have all the like powers as the Court would have in the like circumstances; and the Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators, or umpire, or the parties, may desire to have examined, as the Court is authorized to issue in causes tried before it; and persons not attending in consequence of such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators, or umpire, during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the arbitrator or arbitrators, or umpire, as they would incur for the same offences in suits tried before the Court; provided, that the arbitrator or arbitrators, or umpire, shall report the order, with the reason for making it, to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order.

CCXX.

Extension of time for making award.

In cases where the arbitrators or umpire shall not have been able to complete the award within the period specified in the order, from want of the necessary evidence or information, or other good and sufficient cause, the Court may from time to time enlarge the period for the delivery of the award if it shall think proper. In any case in which an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

CCXXI.

In case of death, incapacity, or refusal to act of arbitrators or umpire, Court may appoint others in stead.

If, in any case of reference to arbitration by an order of Court, the appointed arbitrator or arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court, on the application of the parties, or any of them, to appoint a new arbitrator or arbitrators, or umpire, in the place or stead of the person or persons so dying, or refusing or becoming incapable to act; and where two arbitrators are at liberty by the terms of the order of reference to appoint an umpire and do not appoint an umpire, then and in every such instance any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven clear days after such notice shall have been served no umpire be appointed, it shall be lawful for the Court upon the application of the party having served such notice as aforesaid, upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this article, the arbitrator or arbitrators, or umpire so appointed, shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

CCXXII.

Award how to be submitted to Court.

When a final award in a cause shall be made, either by the arbitrators or umpire, it shall be submitted to the Court under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the cause.

CCXXIII.

Arbitrator may state special case.

It shall be lawful for the arbitrator or arbitrators and umpire, upon any reference by an order of Court, whether compulsory or by consent of parties, if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

CCXXIV.

Power to send back to arbitrator.

In any case where reference shall be made to arbitration as aforesaid, the Court shall have power at any time and from time to time to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the same arbitrator or arbitrators or umpire, upon such terms as to costs and otherwise as to the said Court may seem proper.

CCXXV.

Judgment to be pronounced in terms of the award.

If the Court shall not see cause to remit the matters referred for reconsideration in manner aforesaid, it shall pronounce judgment conformably to the award, unless the same shall be set aside, or to its own opinion on the special case if the award shall have been submitted to it in the form of a special case, and the decree shall be carried into execution in the same manner as other decrees of the Court.

CCXXVI.

Applications to set aside the award.

All applications to set aside any award made on a compulsory reference, or a reference by consent of the parties, shall be made within ten days after the same has been submitted to the Court; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, judgment shall be pronounced as mentioned in the last preceding article, and such judgment shall be final between the parties.

CHAPTER VI.

Of Proceedings on Agreement of Parties.

How Questions may be raised for the Decision of a Civil Court by any Persons interested.

CCXXVII.

Questions of fact, or of law or equity may be raised by agreement for the decision of any Court having Jurisdiction.

Parties interested, or claiming to be interested, in the decision of any question or questions of fact, or law or equity, may enter into an agreement which shall not be subject to any stamp duty, that upon the finding of a Judge, in the affirmative or negative of such question or questions of fact, or of law or equity, a sum of money fixed by the parties, or to be determined by the Judge, shall be paid by one of the parties; or that some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts specified in the agreement. Where the agreement is for the delivery of some property, moveable or immoveable, or for the doing or performing, or the refraining to do or perform any particular act or acts, the estimated value of the property to be delivered, or to which the act or acts specified may have reference, shall be stated in the agreement.

CCXXVIII.

The agreement to be filed and numbered as a cause.

The agreement may be filed in any Court having jurisdiction in the matter, with the proper officer, and when so filed shall be numbered and registered as a cause between some or one of the parties interested, or claiming to be interested, as Plaintiffs or Plaintiff, and the others or other of them as Defendants or Defendant; but it shall not be necessary to issue any process for summoning the Defendant.

CCXXIX.

Parties to be subject to the Court's jurisdiction.

After the agreement shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and shall be bound by the statements therein.

CCXXX.

Hearing and disposal of the case.

The case shall be set down for hearing as an ordinary suit; and if the Judge shall be satisfied, after an examination of the parties, their Attorneys or Vakeels,

or taking such evidence as he may deem proper, that the agreement was duly executed by the parties, and that they have a *bonâ fide* interest in the question or questions of fact or of law or equity stated therein, and that the same is or are fit to be tried or decided, he shall proceed to record and try, or hear the same, and deliver his finding or opinion thereon, in the same way as in an ordinary suit; and shall, upon his finding or deciding upon the question or questions of fact or of law or equity, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

Of Special Cases for the Opinion of the High Court.

CCXXXI.

Persons interested or claiming to be interested in any question as to the construction of any Act of Parliament, or any Regulation of the Bengal Code, or Act of the Council of India, will, deed, or other instrument in writing, or any article, clause, matter, or thing therein contained, or as to the title or evidence of title to any real or personal estate contracted to be sold or otherwise dealt with, or as to the parties to or the form of any deed or instrument for carrying any such contract into effect, or as to any other matter or thing, may, with the consent of a Judge of the High Court, concur in stating the same in the form of a special case for the opinion of the Court; and all executors, administrators, and trustees may concur in such case.

Special case may be stated by any persons interested.

CCXXXII.

Every such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby, and shall be signed by the parties or their Advocates, Attorneys, or Vakeels.

What it is to contain.

CCXXXIII.

The special case shall be filed with the proper officer of the Court, and shall be numbered and registered as a cause between some or one of the parties interested or claiming to be interested as Plaintiffs or Plaintiff, and the others or other of them as Defendants or Defendant; but it shall not be necessary to issue any process for summoning the Defendants or Defendant.

To be filed and numbered as a cause.

CCXXXIV.

After the special case shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and such of the parties as are legally competent to bind themselves, shall, for the purposes of such special case, be bound by the statements therein; and the parties who are not legally competent to bind themselves shall also be bound by the statements therein, if the Court shall think proper so to direct, after taking such precautions as may be deemed necessary for protecting the rights of such parties.

Parties thereto to be subject to Court's jurisdiction.

CCXXXV.

The special case shall be set down for hearing as an ordinary suit, and the Court, after hearing the parties, their Advocates or Vakeels, shall proceed to determine the questions raised therein, or any of them, and to declare its opinion thereon, and, so far as the case shall admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration; and every such declaration of the Court shall have the same force and effect as such declaration would have had, and shall be as binding to the same extent as such declaration would have been, if contained in a judgment pronounced in a contested suit. Provided that, if upon the hearing of such special case as aforesaid, the Court shall be of opinion that the questions raised thereby, or any of them, cannot properly be decided upon such case, the Court may refuse to decide the same.

Hearing and disposal of the case.

CHAPTER VII.

Of Appeals.

Appeals from Final Decrees.

CCXXXVI.

In what cases Appeals shall lie from decisions of Judges, Principal Sudder Ameens, and Moonsiffs.

An appeal shall lie, as herein-after provided, from the decisions of the Judge, the Principal Sudder Ameen, and of the Moonsiff, in all suits in which the property, or possession, or right of occupancy of land or other real property, or the right to receive rent or profit issuing out of land or other real property, or the right to hold land or other real property exempt from the payment of rent or revenue, or anything in the nature thereof, or the right to hold land or other real property subject to the payment of a fixed annual sum on account of rent or revenue, or anything in the nature thereof, or the right to any benefits, liberties, or privileges derived out of or affecting any landed or other real property, or the right to receive or collect any customary or other payments or gratuities on any account whatsoever, or the title to any office, or to any trust or special privileges, or to any toll, fair, market, or franchise, or anything in the nature thereof respectively, shall be in question; and in all suits in which the right of inheritance from, or succession to, any person, or the validity of any marriage, divorce, will, or authority to adopt, or of any decree, bequest, or limitation under any will or settlement, or the condition or *status* of any person, in respect of relationship, religion, caste, or otherwise, or the custody or guardianship of any person, may be disputed; and in all suits for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or for breach of promise of marriage; and in all suits in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

CCXXXVII.

When it shall not lie.

An appeal shall also lie from all other decisions of the Judge, the Principal Sudder Ameen, and Moonsiff, except in suits in which the amount claimed does not exceed the sum of fifty rupees.

CCXXXVIII.

When the appeal from the Principal Sudder Ameen and Moonsiff shall be to the Zillah Judge, and when to the High Court.

In suits in which the amount claimed, or the value of the property claimed, does not exceed the sum of one thousand rupees, the appeal from the decision of the Principal Sudder Ameen, or Moonsiff, as the case may be, shall, except as herein-after provided, be to the Zillah Judge; in suits above that sum, to the High Court at Agra. And in suits in which there is no specification of the estimated value of any property, or of any sum of money by way of damages, the appeal from the decision of the Principal Sudder Ameen shall be to the High Court.

CCXXXIX.

The decision of the Zillah Judge in appeal is final.

The decision of the Judge in appeals from the decision of the Principal Sudder Ameen, or Moonsiff, shall be final; provided, however, that it shall be competent to the Judge, at the time of deciding an appeal from the judgment of a Principal Sudder Ameen or Moonsiff, to record his opinion, certifying in his judgment his reasons for the same, that the case is one for revision by the High Court, and when he shall have so certified, the High Court shall admit a special appeal from the decision of the Zillah Judge, in the event of either of the parties making application to that effect.

CCXL.

In original suits the appeal from the Zillah Judge and from the Moonsiff of Agra shall be to the High Court.

The appeal from the decisions of the Zillah Judge, and from the decisions of the Moonsiff of Agra, in original suits, shall be to the High Court at Agra.

CCXLI.

An appeal lies from Judges of the High Court exercising original jurisdiction to the High Court in its appellate capacity.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more Judges of the High Court to one of the Appellate Courts constituted by Judges of the High Court.

CCXLII.

In all cases of appeal from decisions of the Courts of original jurisdiction mentioned in the last preceding article, the Appellate Court shall consist of a greater number of Judges than the Court which passed the decision appealed from. And in all cases whatsoever if there should be a difference of opinion among the Judges of the Appellate Court the decision shall be according to the opinion of the majority; and if the opinions of the Judges are equally divided, the decision of the Lower Court shall be affirmed.

How the Appellate Court is to be constituted.

Decision in all cases of appeal.

How Appeals are to be preferred.

CCXLIII.

The appeal shall be made in the form of a memorandum as herein-after prescribed, which may be presented in the Appellate Court, or in the Court in which the decision objected to was passed for transmission to the Appellate Court. In either case the memorandum must be presented within the times herein-after specified, unless the appellant shall, by a petition to the Appellate Court, show sufficient cause for not having presented it within such limited periods; that is to say, within thirty-one days if the appeal be to the Zillah Judge, or be to the High Court from a decision of a Court of original jurisdiction constituted by one or more of its own Judges, or from a decision of the Moonsiff of Agra, and within ninety-one days if the appeal be to the High Court from the decision of a Zillah Judge, Principal Sudder Ameen, or Moonsiff other than the Moonsiff of Agra; the days to be reckoned in all the cases as immediately following and exclusive of the day on which judgment was pronounced.

Appeal to be preferred by a memorandum to be filed within specified time.

CCXLIV.

An application for an extension of the time for presenting a memorandum of appeal may be made directly to the Appellate Court, or through the intervention of the Lower Court, at the option of the applicant. If the application for extension of time be made to the Lower Court, that Court shall record the reasons assigned for the application, and shall transmit a copy of its proceedings to the Appellate Court.

Time may be extended by an application.

CCXLV.

Every memorandum of appeal shall set forth concisely, and under distinct heads, grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. But the appellant shall not be tied down to the objections set forth by him in his memorandum of appeal.

What the memorandum is to contain.

The memorandum of appeal shall be in the following form, or to the following effect—

Form of memorandum.

Memorandum of Appeal.

(*Name, &c. as in Register.*) Plaintiff.
(*Name, &c. as in Register.*) Defendant.

[*Name of Appellant*] Plaintiff [*or* Defendant] above named appeals to the High Court at Agra [*or* Zillah Court at *as the case may be*], against the decree of the Moonsiff, or Principal Sudder Ameen of [*or as the case may be*], in the above cause, dated the day of ; for the following among other reasons.

CCXLVI.

If the memorandum of appeal be presented in the Court in which the decree objected to was passed, such last-mentioned Court shall forthwith forward the same to the Appellate Court, with an endorsement thereon of the date on which it was presented.

Memorandum to be forwarded to the Appellate Court.

CCXLVII.

Within one month from the date on which the memorandum of appeal shall be presented in the Lower Court, or one month from the date on which intimation shall be received by the Lower Court from the Appellate Court, that

What proceedings to be forwarded to the Appellate Court, and when.

the memorandum of appeal has been presented in the Appellate Court, unless the Appellate Court shall think proper to enlarge the time, and then within such enlarged time, the Judge of the Lower Court shall, except as provided in the next succeeding article, certify under his hand and the seal of his Court the record duly made up and authenticated, including authenticated copies of all his own material proceedings in the cause, and the original depositions, exhibits, and every original paper read in the cause, together with the written statements, if any, that may have been presented by the parties, or any of them, and received and recorded by the Judge, and shall transmit the record so made up to the Appellate Court. Previous to transmitting the above-mentioned papers to the Appellate Court the Judge of the Lower Court shall cause true and faithful copies of all the originals to be made out and authenticated by the proper officer of his Court, and deposited in the Court in lieu of the originals. The copies shall be records of the Court, and shall be received in evidence in any other Court in the same way as originals. In cases where any original deposition or other original proceedings or matter whatsoever shall have been previously entered in a book, which may likewise contain other proceedings in other distinct cases, or any other matter, so that such original papers cannot be transmitted to the Appellate Court without the other proceeding or matters, the Judge of the Lower Court, within the time and in the manner before directed, shall certify a true and authentic copy of such original papers, and that the original of each copy so transmitted is entered in such book. In cases where any original paper shall have been mislaid or lost, and a copy of it shall have been entered in any book or proceedings of the Court, the copy shall have the force and effect of the original, and the Judge shall transmit a copy of it to the Appellate Court, and shall in like manner certify that the original, after due search, cannot be found. A memorandum of all expenses which may be incurred in the preparation of copies of papers or otherwise, in or about the making up and transmitting the record, shall be forwarded therewith to the Appellate Court, and shall be considered costs in the cause.

CCXLVIII.

In certain appeals to the High Court the proper officer to attend in the Appellate Court with the original record of the case.

In appeals to the High Court from the Courts of original jurisdiction constituted by one or more of its own Judges, and in appeals from the Principal Sudder Ameen and Moonsiff to the Zillah Judge, the proper officer shall attend in the Appellate Court, from time to time as may be required, with the original record of the proceedings in the cause. In appeals to the High Court from the Moonsiff of Agra, the original record shall be transmitted to the High Court.

Of staying and executing Decrees under Appeal.

CCXLIX.

When and on what terms execution of decree may be stayed.

When any party or parties appealing is or are directed to pay any sum of money, or to perform any duty, or when the decree is for the possession of land or any other property, real or personal, the Court whose judgment is appealed from shall and is hereby empowered to award that its judgment shall be carried into execution, or that sufficient security shall be given for the performance of such judgment; provided always, that where the Court of original jurisdiction shall think fit to order the judgment to be executed, security shall be taken from the other party or parties for the due performance of such order or judgment as may be passed in the Court of Appeal. But this decision shall itself be subject to appeal.

Of Procedure in Appeals from final Decrees.

CCL.

How the appeal is to be entered.

When a memorandum of appeal shall have been presented in or transmitted to an Appellate Court, the Clerk (or proper officer) of the Appellate Court shall endorse thereon the date of presentment if it was presented in the Appellate

Court, or the date of receipt if it was transmitted from the Lower Court, and shall register the appeal in a book to be kept for the purpose, and called the Register of Appeals.

CCLI.

The register shall be kept in the form contained in the schedule (B.) hereunto annexed; and a certified copy of the register, under the seal of the Court, shall be received in evidence in all Courts of Justice in India. Form of the register.

CCLII.

It shall not be necessary in any Court of Appeal to take any security for costs, but it shall be in the discretion of every such Court of Appeal to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to answer. Court of Appeal may, at its discretion, require security for costs from appellant.

CCLIII.

A day shall be fixed by the Appellate Court for the hearing and disposal of the appeal; which day shall not be earlier, in cases in which a record of the suit shall be transmitted by the Lower Court, than forty-two days from the day on which the record may have been received in the Appellate Court, and shall not be earlier, in cases appealable to the High Court, when the officer is required to attend the Appellate Court with the original record of the suit, than twenty-one days from the presentment of the memorandum of appeal, but shall otherwise be as early, in all cases, as can be conveniently fixed, with a due regard to the state of business in the Court; the days to be reckoned in all the cases as exclusive of the day of hearing, and of the day on which the record may have been received, or the memorandum of appeal presented, in the Appellate Court. Notice of the day which has been fixed for the hearing of the appeal shall be sent by the proper officer of the Appellate Court to the proper officer of the Lower Court from the decree of which the appeal has been preferred, and shall be served on the appellant and respondent, in the same way as herein-before provided for in respect to the service of a summons. The notice to the appellant shall contain an additional intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, either in person or by an Attorney or Vakeel of the Appellate Court, his appeal will be dismissed for want of prosecution. And the notice to the respondent shall contain an intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided *ex parte* in his absence. Day to be fixed for hearing the appeal.

CCLIV.

On the day in that behalf mentioned in the notices, and unless the Court shall otherwise direct, from day to day, until the cause is called on, the parties, appellant and respondent, shall be in attendance in the Appellate Court, in person or by an Attorney or Vakeel of the Court, duly empowered in manner herein-before mentioned, to represent them in all matters relating to the prosecution or defence of the appeal. The parties to be in attendance on day so fixed.

CCLV.

If on the day fixed for the hearing of the appeal, or on any other day subsequent thereto on which the cause may be called on, the appellant shall not appear in person, or by an Attorney or Vakeel of the Court, the appeal shall be dismissed for default. If the appellant appears in person, or by an Attorney or Vakeel, and the respondent shall not appear in person, or by Attorney or Vakeel, the appeal shall be heard *ex parte* in his absence. Consequences of non-appearance.

CCLVI.

Where an appeal is dismissed for default, an intimation of the dismissal shall be sent to the Court of original jurisdiction, and the costs of preparing copies of papers, and making up and transmitting the record, may be realized from the appellant, under an order of that Court, to be enforced in the same manner as a decree of Court. When an appeal is dismissed, intimation to be sent to the Lower Court.

CCLVII.

In all cases in which an appeal shall be dismissed for default of prosecution, it shall be competent to the appellant to apply within reasonable time to the How an appeal dismissed for

default may be restored.

Appellate Court, for the re-admission of his appeal. The application shall be accompanied with a certificate from the Court of original jurisdiction, that the costs mentioned in the preceding article, when ordered to be realized from the appellant, have been fully paid and satisfied; and if the Appellate Court shall think proper to grant such application, a day shall be thereupon fixed for the hearing of the appeal, and a fresh notice shall be issued to the respondent, to be served in the same way as the first notice, and with the like additional intimation as is herein-before provided; but it shall not be necessary to issue or serve any notice on the appellant.

CCLVIII.

The Appellate Court, how to give judgment.

The Appellate Court, after hearing the cause, shall proceed to give its judgment in the same manner as herein-before prescribed in regard to the judgment of Courts of original jurisdiction, for confirming, or reversing, or modifying and altering the decree of the Lower Court, as the Appellate Court shall think proper.

CCLIX.

No decision to be reversed for irregularity.

No decision shall be reversed or altered, nor shall any case be referred back to the Court of original jurisdiction, on account of any error, defect, or irregularity not affecting the merits of the case.

CCLX.

When a case may be remanded by Appellate Court.

If the Court of original jurisdiction shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Court of Appeal essential to the rights of the parties, and the decree of the Lower Court shall be reversed by the decree in appeal, the Appellate Court may, if it think right, remit the case to the Lower Court, and cause the papers in the suit, together with a copy of the decree in appeal, to be transmitted to such Lower Court, with directions to proceed in the investigation of the merits of the case, and pass a decree therein.

CCLXI.

Power to remand limited as above.

It shall not be competent to the Appellate Court to remand a case for a second decision by the Court of original jurisdiction, except as provided in the preceding clause.

CCLXII.

When the Appellate Court may dispose of a case though the Lower Court has decided on other grounds.

When there is sufficient evidence upon the record of the Lower Court to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate Court shall finally determine the case, notwithstanding that the judgment of the Lower Court has proceeded wholly upon some other ground.

CCLXIII.

When the Appellate Court may call for fresh evidence.

It shall not be competent to the parties in an appeal to produce additional evidence, whether of exhibits or witnesses; but if it appears that the Lower Court refused to admit competent evidence, or if the Appellate Court itself requires the production of exhibits or witnesses, as necessary to enable it to pronounce a satisfactory judgment, or if any other substantial cause demands a deviation from the ordinary rule, the Court may allow additional exhibits to be received, and the same and other witnesses to be examined; provided that whenever this power is exercised, the reasons for exercising it be recorded on the proceedings by the Appellate Court.

CCLXIV.

How additional evidence is to be taken.

Whenever additional evidence is permitted to be received, it shall be competent to the Court of Appeal to take such evidence before itself, or to require the Lower, or any other Court, or to empower any person, to take such evidence; and it shall also be competent to the Court of Appeal to prescribe the mode by which such evidence shall be taken; and the Court of Appeal shall be at liberty to proceed by all or any of the modes aforesaid.

CCLXV.

Points to be defined.

In all cases where additional evidence is permitted to be taken, the Court shall define the point or points to which the evidence is to be confined, and record the same in the minutes of the proceedings.

CCLXVI.

Powers of Appellate Court.

The Appellate Court shall have all the like powers in regard to the granting of time, adjourning the hearing of the cause, examining the parties or their Attornies or Vakeels, and awarding costs, or otherwise, as are herein-before contained in regard to Courts of original jurisdiction.

CCLXVII.

How the judgment of the Appellate Court is to be delivered.

In what language it is to be written.

The judgment of the Appellate Court shall in all cases be pronounced in open Court, and, after being written out, shall be signed by the Judge or Judges. The judgment shall be written out in the English language; and where that language is not the language in ordinary proceedings before the Court, the judgment shall be translated into the languages so being in such ordinary use, and the translation shall be signed by the Judge.

CCLXVIII.

What the decree is to contain.

The decree of the Appellate Court shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and description of the parties appellant and respondent, the memorandum of appeal, a list of any additional exhibits that the Appellate Court may have allowed to be produced, and the names of any witnesses that it may have allowed to be examined. It shall also contain an exact copy of the ordering part of the judgment, or a translation thereof in the language in ordinary use in proceedings before the Court. The decree shall be sealed with the seal of the Court, and signed by the Judge or Judges who passed it, and copies shall be furnished to the parties in the same manner as herein-before provided for in regard to the decrees of Courts of original jurisdiction.

CCLXIX.

A certified copy of the decree to be transmitted to the Lower Court.

A copy of the decree, certified by the Clerk or proper officer of the Appellate Court, and sealed with the seal of the Court, shall be transmitted to the Clerk or proper officer of the Court of original jurisdiction which passed the first decree in the suit appealed from, and shall by him be filed with the original proceedings in the cause; and an entry of the judgment of the Appellate Court shall be made in the original register of the suit.

CCLXX.

How to be executed.

Application for execution of the decree of an Appellate Court shall be made to the Court of original jurisdiction which passed the first decree or order appealed from, and shall be enforced and executed by the Court which passed the first decree or order appealed from, in the manner and according to the rules herein-before contained for the enforcement and execution of original decrees or orders made by such last-mentioned Court.

Appeals from Orders.

CCLXXI.

From what orders appeals shall lie.

Appeals shall lie from the orders of Civil Courts as follows:—

1st. In all cases whatsoever where the order is for the punishment of a contempt committed in the presence of the Court, except when the Court which has passed the order is one of the Courts of original jurisdiction constituted by a Judge or Judges of the High Court.

2d. In all other cases whatsoever, unless otherwise specially provided for, if the decree in the suit be appealable.

3d. In all other cases, unless otherwise specially provided for, whether the decree in the suit be appealable or not, provided that the person against whom the order has been passed is not a party to the suit.

It will be observed that when the decree in the suit is not appealable, there will be no appeal from an order passed against a party to the suit, unless the order be for the punishment of a contempt committed in the presence of the Court.

CCLXXII.

Court to which the appeal should be made.

The appeal from an order shall always be made to the Court to which the decree in the suit in which the order may be passed is appealable. If the order

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be passed in a suit in which the decree it not appealable, or in a judicial proceeding which cannot properly be titled as of any suit, the appeal from the order of a Moonsiff, other than the Moonsiff of Agra, or Principal Sudder Ameen, shall be made to the Zillah Judge, and the appeal from the order of a Zillah Judge, or of the Moonsiff of Agra, shall be made to the High Court.

CCLXXIII.

The appeal not to stay proceedings.

The appeal shall not in any case stop the proceedings in the Lower Court.

Of Procedure in Appeals from Orders.

CCLXXIV.

Procedure, how it differs from the procedure in appeals from decrees.

The procedure in appeals from orders shall be in all respects the same as in appeals from final decrees, except as herein-after provided.

1. The register shall be kept in the form contained in the Schedule (C.) hereunto annexed

2. The memorandum of appeal shall in all cases be presented in the Court in which the order objected to was passed within five days immediately following, and exclusive of the day on which the order was pronounced.

3. Where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, the memorandum of appeal shall be accompanied with a list of the papers or depositions of which the appellant desires that copies should be transmitted to the Appellate Court.

4. The memorandum of appeal shall be transmitted to the Appellate Court within eight days from the date of presentment; and where the appeal is from the order ot a Zillah Judge, Principal Sudder Ameen, or Moonsiff, authenticated copies of the order appealed against, and of the papers and depositions mentioned in the list accompanying the memorandum, shall be transmitted to the Appellate Court with the memorandum of appeal.

5. At the expiration of twenty days after the presentment of a memorandum of appeal in a case appealable to the Zillah Court, and thirty days after its presentment in a case appealable to the High Court, from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, and ten days in a case appealable to the High Court from an order of a Court of original jurisdiction constituted by one or more of its own Judges, the case shall be set down for hearing in the Appellate Court, and if the Appellant does not appear on any day thereafter that the case may be called on for hearing, it shall be struck out of the file; but the Appellate Court shall have power to restore the case to the file, if sufficient cause to its satisfaction for so doing be shown within a reasonable time.

6. It shall not be necessary for the Appellate Court to call for any further papers, unless it shall think proper.

7. It shall not be necessary to give any notice to the respondent.

8. The judgment may be delivered orally, and reduced to writing in the language of the Court, by an officer of the Court, or otherwise as the Court may think proper in each particular case.

CHAPTER VIII.

Review of Judgment.

CCLXXV.

Cases in which a party may apply for a review of judgment.

Any persons considering themselves aggrieved by a decree of any Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a Zillah Judge in appeal, from which no special appeal shall have been admitted by the High Court—or by a decree of the High Court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council,—and who, from the discovery of new matter or evidence which was not within their knowledge, or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed

against them—may apply in person or by Attorney or Vakeel for a review of judgment by the Court which passed the decree. The application shall be made within three months from the date of the decree, but the Courts are nevertheless authorized to admit applications for a review after the period above mentioned, provided that the parties preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period. If the Court to which an application for a review may be presented shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if on the contrary it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court to which the application may have been presented shall grant the review, and its orders in either case, whether for rejecting the application or granting the review, shall be final.

Within what time the application should be made.

The order of the Court for granting or refusing the review is final.

CCLXXVI.

Provided that if the Court to which the application for a review of its judgment has been presented be the High Court, whenever the Judge or Judges who may have passed the decree, or if the decree have been passed by two or more Judges, when any of such Judges shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering his order or opinion upon the same, it shall not be competent to any other Judge or Judges of the same Court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

Application for a review in the High Court must be made to the Judge or Judges that passed the decree.

CCLXXVII.

In all cases in which an application for a review of judgment may be granted by any Court, the Court shall give such order, in regard to the summoning of the absent party or parties and hearing of the cause, as it may deem proper in the circumstances of the case.

Whenever a review is granted the parties are to be summoned.

CCLXXVIII.

The Principal Sudder Ameens and Moonsiffs, except the Moonsiff of Agra, shall at the close of each month send to the Judge of the Zillah a list of the cases in which they may have admitted a review of judgment, with a statement of the grounds on which the review has been admitted, and the Zillah Judge and the Moonsiff of Agra shall in like manner, at the close of each month, send to the High Court a list of the cases in which they may have admitted a review of judgment, together with the grounds on which the review has been admitted, and the Judge shall at the same time transmit to the High Court any lists which he may have received from the Principal Sudder Ameens and Moonsiffs of cases in which they may have admitted a review of judgment, together with such remarks as he may think proper thereon.

Abstract statements of reviews admitted to be forwarded to Superior Courts.

Criminal Courts of Original Jurisdiction.

I.

Criminal Courts other than the High Court.

The Courts for the trial of offences, other than the High Court, shall be the following:—

COURTS OF SESSION;

COURTS OF THE MAGISTRATES;

SUBORDINATE COURTS; viz.:—

Subordinate Criminal Courts of the 1st Class.

Subordinate Criminal Courts of the 2d Class.

II.

Who are to be Judges of the Subordinate Criminal Courts.

First Assistants to the Magistrate, and Principal Sudder Ameens, shall be Judges of Subordinate Criminal Courts of the 1st Class.

Second Assistants to the Magistrate, and Moonsiffs, shall be Judges of Subordinate Criminal Courts of the 2d Class.

III.

Criminal Courts how to be denominated.

The Session Courts, the Courts of the Magistrates, and Subordinate Criminal Courts shall be denominated after the zillah, or city, or division in which they are respectively established.

IV.

Appointment, suspension, and removal of Criminal Judges.

The appointment, suspension, and removal of the Judges of the Session Courts, of the Magistrates, and of the Judges of the several Subordinate Criminal Courts, shall be regulated by such rules and orders as the Governor General in Council shall, from time to time, pass.

V.

Declaration on entering upon office.

Each Criminal Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:—

"I, *A.B.*, appointed of the Court of do
" solemnly declare that I will faithfully perform the duties of my office
" to the best of my ability, knowledge, and judgment."

VI.

Seal.

Each Criminal Court is to use a seal such as shall be prescribed by the Government.

VII.

Ministerial officers.

It shall rest with the Governor General in Council, upon the report of the High Court, made after such communication with the Session Judges and Magistrates and Judges of the Subordinate Criminal Courts as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to those several Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars as the said Governor General in Council may deem proper. Upon the receipt of the instructions of the Governor General in Council the Judges of the Criminal Courts shall make the appointments to the several offices of their respective establishments.

VIII.

No person excepted from jurisdiction by reason of place of birth or of descent.

No person whatever shall by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.

IX.

High Court and Session Court to have jurisdiction over all offences.

The High Court and Session Court shall have jurisdiction in respect of all offences punishable under the Penal Code.

X.

Exclusive jurisdiction as to certain offences.

The High Court and Session Court exclusively shall have jurisdiction in respect of—

1st. Offences entered in Schedule A. of the Code of Procedure as triable by those Courts only.

2d. The offences punishable under Clauses 364, 365, 366, and 390 of the Penal Code, when the value of the property which is the subject of the offence exceeds 500 rupees.

3d. Offences however punishable under any clause of the Penal Code, charged against public servants of the first four classes described in Clause 14, whether as such public servants or otherwise.

4th. Offences however punishable under any clause of the Penal Code, except Clause 149, charged against the following public servants, as such public servants:

Every head ministerial officer, every record keeper, and every Nazir of a Court of Justice, and every officer of a Court of Justice, whose duty it is, as such officer, to investigate or report on any matter of law or fact;

Every head gaoler;

Every darogha of police;

Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of the Government, or to make any survey, assessment, or contract, on behalf of the Government; or to investigate, or to report on any matter affecting the pecuniary interests of the Government; or to make, authenticate, or keep any document relating to the pecuniary interests of the Government.

5th. Offences however punishable under any clause of the Penal Code, charged against the following public servants, as such public servants:

Every juryman;

Every arbitrator to whom any cause has been referred by a Court of Justice.

XI.

Magistrates, their jurisdiction as to offences.

Magistrates are empowered to try all offences not assigned to the exclusive jurisdiction of the High Court or Session Court.

XII.

Subordinate Criminal Courts, their jurisdiction as to offences.

Subordinate Criminal Courts of the first and second classes are empowered to try offences entered in Schedule A. of the Code of Procedure as triable by those Courts respectively.

XIII.

Session Court not to pass sentence in cases punishable with death.

In cases tried by the Courts of Session in which the Defendant is convicted of any offence which, by the Penal Code, is punishable with death, the Court shall not pass judgment, but shall refer the case to the High Court, which shall pass judgment thereon.

XIV.

Session Court may direct transfer of a criminal case.

It shall be competent to a Session Judge, on cause shown, to direct the transfer of any criminal case from any Criminal Court to any other Criminal Court of equal or superior jurisdiction in his district.

XV.

Magistrates, their penal jurisdiction.

Magistrates are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding two years, or to fine exceeding 1,000 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code.

XVI.

Judges of the Subordinate Criminal Courts of the 1st Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding one year, or to fine exceeding 200 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code. Subordinate Criminal Courts, 1st class, their penal jurisdiction.

XVII.

Judges of the Subordinate Criminal Courts of the 2d Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding three months, or to fine exceeding 50 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code. Subordinate Criminal Courts, 2d class, their penal jurisdiction.

XVIII.

In every case punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of Clauses 51 and 52 of the Penal Code in awarding the period of imprisonment in default of payment of the fine; provided, however, that in such cases decided by the Magistrate and Subordinate Criminal Courts, the period of imprisonment awarded in default of payment of the fine shall in no case exceed one fourth of the period of imprisonment which such Magistrate or Subordinate Criminal Court is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine. Imprisonment in default of payment of fine.

XIX.

It shall be competent to the Government to direct that any Subordinate Criminal Court shall be authorized to hold the preliminary inquiry into cases triable by the Session Courts, and to commit or hold to bail parties to take their trial before such Courts, and to exercise all the powers necessary for such purposes. Subordinate Criminal Courts may be empowered to prepare cases for trial before the Session Court.

Proposed Code of Procedure for the Courts of Criminal Judicature in the North-western Provinces of the Presidency of Bengal.

CONTENTS.

CHAPTER I.

Preliminary Rules.

I.

No institution stamp fee, or deposit.

No stamp duty or fee shall be required on the institution of any criminal case, or on the entry of any appeal from the decision or order or any Criminal Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Criminal Court, except such fees or charges as may be set forth in tables to be prepared as provided in the next succeeding article.

II.

Table of fees and charges to be prepared.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Criminal Courts comprised in any zillah by the Session Judge and Magistrate of the zillah under the direction of the High Court, and for the High Court by the Judges thereof. A copy of the table of fees and charges so prepared, which may be applicable to any Criminal Court, shall, after they shall have received the sanction of the Governor General in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him than such fees or charges as may be set forth in such table

III.

All complainants and witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their preferring complaints or giving evidence, and they shall, upon such examination, be bound to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Complainants and witnesses to be examined without oath, affirmation, or warning.

IV.

No person whatever shall, by reason of place or birth, or by reason of descent, be excepted from the rules of Criminal Procedure.

No person excepted from Criminal Procedure by reason of place of birth or of descent.

CHAPTER II.

Obtaining a Summons on Warrant.

V.

Where an offence has been committed, or is suspected to have been committed, the proceeding, in order to compel the party known or suspected to have committed such offence to appear for the purpose of preliminary inquiry concerning the same, may be by summons or arrest.

Proceeding to compel appearance.

VI.

The proceeding by summons may be in the cases and shall be subject to the rules herein-after contained.

Summons.

VII.

The proceeding by arrest may be either,—

Arrest.

1. By warrant;
2. Or by private person without warrant;
3. Or by an officer without warrant.

VIII.

A summons, or a warrant of arrest, may be obtained on such complaint as is mentioned in the next succeeding article.

Complaint.

IX.

Every complaint made before a Magistrate or darogha of police, in order to the issuing of a summons or a warrant against a person accused of any offence, either directly or on suspicion, if not written shall be forthwith reduced into writing, and shall be signed by the complainant, and also by the Magistrate or darogha of police issuing the summons or warrant.

To be reduced into writing and signed

X.

Upon such complaint duly made before a Magistrate, he shall, in case it appear to him that there is sufficient ground for proceeding, issue his summons or warrant for causing the person accused to appear before himself or some other Magistrate or Court having jurisdiction; and if in the judgment of such Magistrate there be no sufficient ground, he shall dismiss the complaint, whether it be direct or on suspicion only.

Magistrate, how to proceed on complaint

XI.

Upon such complaint duly made before a darogha of police, he shall, in case it appear to him that there is sufficient ground for proceeding, and that the immediate apprehension of the accused is necessary to the ends of justice, issue his summons or warrant for causing the person accused to appear before himself; and if in the judgment of such darogha there be no sufficient ground, or the immediate apprehension of the accused is not necessary to the ends of justice, he shall abstain from issuing any process, and shall submit the complaint for the orders of the Magistrate.

Darogha of police, how to proceed on complaint.

XII.

Every summons issued by a Magistrate or darogha of police to a person so accused shall be in writing, under the hand and seal of the Magistrate or darogha of police issuing it; shall show his office; that the summons is made on a complaint duly made of an offence committed, or suspected to have been committed; shall be directed either to the person accused by such complaint, or some

Summons, what it is to contain, and how to be directed.

other person; if directed to the person accused it shall, if issued by the Magistrate, direct him to appear before the Magistrate issuing such summons, or some other Magistrate or Court as aforesaid, at a time and place specified; and if issued by a darogha of police, to appear before such darogha at a time and place specified; and if directed to any other person it shall require such other person to summon the person accused so to appear.

XIII.

Summons, how to be served.

If such summons be directed to the person accused, it may either be served on him personally or left with some adult member of his family.

XIV.

Notwithstanding summons, warrant may issue in certain cases.

A Magistrate or darogha of police may, notwithstanding such summons, either before the appearance of the person accused, as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person in all cases in which he might so have done had no such summons been issued.

XV.

Warrant when grantable for an offence committed beyond local jurisdiction.

A Magistrate of one district or darogha of one division may grant a warrant for the apprehension of a suspected offender within that district or division, as the case may be, in respect of an offence of which the law takes cognizance, committed in a different district or division, or on the high seas, or in a foreign country.

XVI.

Where an offence may be investigated and tried in one of two or more jurisdictions.

When a person or several persons shall be accused of the commission of any offence, by reason of any things which have been done, or by reason of any thing or things which have been done, and consequence or consequences which have occurred, every such offence may be inquired of and determined, and every such offender prosecuted and punished, in any district or jurisdiction in which any such thing shall have been done, or any such consequence shall have occurred.

XVII.

Abetment.

The previous abetment of an offence, wherever such abetment may have taken place, may be inquired of and determined in any place or district in which that offence may be inquired of and determined, and by any Court which has jurisdiction to try that offence, as though the previous abetment had been committed at the same place at which that offence was wholly or partly committed.

XVIII.

Abetment.

Provided, that such abetment may be inquired of and determined in any district within which the abettor has done anything for abetting the commission of that offence.

XIX.

Offence committed on boundary.

Where any offence shall be committed on the boundary or boundaries of two or more districts or divisions, or within the distance of 500 yards of any such boundary or boundaries, or shall be begun in one district or division and completed in another, every such offence may be inquired of and determined in any of the said districts or divisions in the same manner as if it had been actually and wholly committed therein.

XX.

During journey, &c.

Where any offence shall be committed on any person or on or in respect of any property in or upon any coach, cart, or other carriage, or upon any beast of burden employed in any journey, or shall be committed on any person or on or in respect of any property on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, such offence may be inquired of and determined in any district or division through any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had been actually committed in such district or division; and in all cases where the side, middle, or other part of any highway, or the side, bank, middle, or other part of any such river,

canal, or navigation, shall constitute the boundary of any two districts or divisions, such offence may be inquired of and determined in either of the said districts or divisions through or adjoining to or by the boundary of any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had actually been committed in such district or division.

XXI.

Whosoever shall fraudulently receive, or fraudulently have in possession, any stolen property, knowing the same to be stolen property, may be prosecuted and punished in any district or place in which he shall have or shall have had such stolen property in his possession, or in any district or place in which any person by whose offence that property came to be stolen property may be prosecuted and punished. Receiving, &c. stolen property.

XXII.

Whosoever shall commit any offence by unlawfully receiving or having in possession any moveable property, knowing the same to have been unlawfully taken, obtained, or converted, may be prosecuted and punished in any district or place in which he shall have or shall have had such property in his possession, or in any district or place in which any person who unlawfully took, or obtained, or converted such property, may be prosecuted and punished for any offence committed thereby. Unlawfully receiving property.

XXIII.

Any offender who shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice, or by virtue of a commutation of such sentence, may be prosecuted and punished either in the district where he shall be apprehended and retaken, or in the district in which the said offence shall have been committed. Escape from lawful custody under sentence.

XXIV.

Any offender who shall return from transportation or banishment, the term of such transportation or banishment not having expired, and his punishment not having been remitted, may be prosecuted and punished either in the district or place where he shall be apprehended, or in that in which he was formerly tried. Returning from transportation or banishment.

XXV.

Any person who shall commit any offence by forgery, or by using as genuine any document which he knows to be forged or falsified by forgery, may be prosecuted and punished in any district or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that district or place. Forgery.

XXVI.

In the preceding articles, and any other article of this Act, wherever the district or other place or the Court in or before which any offence is to be inquired of and determined, or any offence is to be prosecuted and punished, is mentioned, the term "inquired of" shall be deemed to comprise every proceeding preliminary to trial; the term "determined," to comprise trial, and every subsequent proceeding, including the punishment of the offender; and the terms "prosecuted and punished," to comprise every proceeding, whether preliminary or subsequent to trial, or upon such trial, unless in any such case there be something in the subject or context repugnant thereto. Definition of certain terms.

XXVII.

The local jurisdiction of the Magistrate of a zillah or district shall for the purposes of this Act be deemed a district; and the local jurisdiction of a Moonsiff or darogha of police be deemed a division; provided that nothing herein contained shall be held as authorizing a police officer, except under the special authority of the Magistrate, to inquire into any of the offences described in the provisions of the Penal Code specified in Article LXXXI. What is a district, and what a division.

CHAPTER III.

Of the Warrant and its Execution.

XXVIII.

Warrant to bear the name of grantor.

The warrant shall be in the name of the officer who grants it.

XXIX.

Form of warrant.

Every such waraant shall be in writing; shall be directed to some person or persons by name or by official description (and in the latter case, either to some particular officer, or to all or some one or more of that class or description); shall specify the person to be arrested by name or by such other description as may be sufficient to distinguish him; shall order that such person be arrested; shall specify the authority before whom such person after arrest shall be taken; shall state, as the cause of arrest, some offence committed or suspected to have been committed in respect of which the Magistrate or other officer has jurisdiction to issue such warrant; shall show the person who grants it to be a Magistrate or other officer authorized to issue such warrant; shall state the time of making it; show the place where it is granted, either by statement in the body or in the margin of the warrant; and be signed and sealed by the Magistrate or other officer who grants it.

XXX.

Warrant to several persons, jointly and severally.

A warrant directed to several persons jointly and severally may be executed by any one of them.

XXXI.

To several persons jointly.

A warrant directed to several persons jointly, without words excluding the execution by one or a part only of those mentioned, may be executed by any one or by a part only of them.

XXXII.

To a darogha or nazir.

A warrant directed to a darogha of police or to a nazir may be executed by any officer subordinate to such darogha or nazir respectively.

XXXIII.

Officers issuing a warrant may personally superintend its execution.

A Magistrate or other officer authorized to issue a warrant or other criminal process may attend personally for the purpose of seeing that the same be duly executed, and may adopt or direct any legal measures that may be necessary for the due execution thereof.

XXXIV.

Warrant directed to a person not an officer of police or nazir.

A warrant directed to any other person than an officer of police or the nazir of a Court is to be executed by that person; provided nevertheless, that any other person may, in the presence or out of the actual presence of one authorized to execute a warrant, aid him in executing the same, if the person so authorized be near at hand and acting in the execution of the warrant.

XXXV.

All persons bound to assist in certain cases.

Every person is bound to assist a Magistrate or police officer demanding his aid in the taking of an offender, preventing a breach of the peace, the suppression of a riot, or the taking of the rioters.

XXXVI.

Where a warrant of a Magistrate must be executed.

A warrant issued by any Magistrate must be executed (unless it be specially otherwise provided) within the jurisdiction of the Magistrate from whom it issued, or of the Magistrate by whom it has been duly endorsed for execution.

XXXVII.

Warrant endorsed in another jurisdiction.

In case any person against whom a warrant shall be issued by any Magistrate shall escape, go into, reside, or be, or be supposed to be, in any place out of the jurisdiction of the Magistrate granting such warrant, the Magistrate of the place into or in which such person shall escape, go, reside, be or be supposed to be, shall endorse his name on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant within the jurisdiction of the Magistrate who endorsed such warrant, and to apprehend and carry such person before the Magistrate who endorsed

such warrant, or before the Magistrate of the district where the offence was committed. In case such person be carried before the Magistrate who endorsed the warrant, and the offence with which he is charged is bailable in law, he shall be proceeded with in the manner herein-after mentioned in Article CXIX. or Article CLXXX. If the offence be not bailable, he shall be forwarded to the Magistrate of the district in which such offence was committed.

XXXVIII.

Warrant to be endorsed may be sent by post.

Provided that it shall be competent to a Magistrate issuing a warrant for the arrest of a person out of his jurisdiction to direct the warrant to the Magistrate of the district in which such person is, or is supposed to be, and to transmit the same by post. On the receipt of the warrant by the Magistrate to whom it is directed, he shall endorse his name on such warrant, and enforce its execution in the same manner as if the warrant had originally issued from himself. On such person being apprehended, and carried before the Magistrate who endorsed the warrant, he shall be dealt with as provided in the last preceding article.

XXXIX.

Magistrates how to proceed on arrest under his own warrant for an offence committed out of his jurisdiction.

If a person for whose apprehension a warrant has been granted by a Magistrate under the provisions of Article XV. is suspected of an offence committed in a different district, the Magistrate granting the warrant shall, unless he is authorized by any law to complete the inquiry himself, send the person arrested to the Magistrate of the district in which the offence was committed, or take bail for his appearance before such Magistrate if the offence of which he is suspected is bailable in law; and in all other instances the Magistrate shall report the case for the orders of the High Court.

XL.

Darogha how to proceed in such cases.

If the warrant under Article XV. shall have been granted by a darogha, the darogha shall send the person arrested to the Magistrate to whom such darogha is subordinate, unless the offence of which the person arrested is suspected shall have been committed in another division of the district in which the division of the darogha who granted the warrant is comprised; in such case the darogha who granted the warrant shall send the person arrested the darogha of the division in which such offence was committed.

XLI.

Where a warrant of a police officer must be executed.

A warrant issued by a police officer must be executed (unless it be otherwise specially provided) within the jurisdiction of the officer who issued it.

XLII.

When a warrant of arrest may be executed.

An arrest on a warrant for any of the offences specified in Schedule A. of this Code of Procedure as not bailable offences may be made on any day, and at any time of the day or night. It shall be at the discretion of the Magistrate to direct that an arrest on a warrant in any other case may be made on any day, and at any time of the day or night.

XLIII.

Warrant, how to be executed.

In making an arrest the officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by words or actions.

XLIV.

No unnecessary restraint.

After arrest the prisoner shall not be subjected to any more restraint than such as may be necessary to prevent his escape.

XLV.

Notification of purpose to act under the warrant.

One executing or attempting to execute a warrant of arrest is bound to notify to the person against whom such warrant is directed, that he purposes to act under the authority of that warrant.

XLVI.

Notification of substance of warrant.

An officer or other person executing a warrant of arrest must notify the substance of the warrant, and show the warrant, if sight of it be demanded.

XLVII.

Taking and refusing to give up a warrant.

If on a warrant being shown any person take hold of it, and illegally refuse to give it up to the officer or other person authorized to execute it, such officer or other person may retake it by force, provided he use no greater degree of violence than is necessary for the purpose.

XLVIII.

Resisting an endeavour to arrest.

If, after notice by one authorized by warrant to arrest another of his intention to arrest him, the person against whom such warrant is issued shall forcibly resist the endeavour to arrest him, the person so authorized is bound to use all such means as may be necessary to effect an arrest and prevent escape.

XLIX.

Breaking of outer door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any outer door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

L.

Officer, &c., breaking out to liberate himself.

An officer or other person having lawfully entered a dwelling house for the purpose of executing criminal process, or of arresting any person under any of these articles, may lawfully break out of such house when it is necessary for his own liberation; and any officer may lawfully break any outer or inner door or window of a dwelling house in order to liberate any officer or other person who, having entered for such purpose, is unlawfully detained within such dwelling house.

LI.

Breaking of inner door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any inner door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LII.

Breaking open a zenanah or female apartment.

If information be received that a person accused of any offence for which a warrant may issue on complaint, has concealed himself in a zenanah or female apartment in the actual occupancy of women, the officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused, and shall endeavour to ascertain, by the means of two respectable women unconnected with the family or with each other, whether the person against whom the warrant has been issued be really concealed in the zenanah; in which case, and if such person shall not deliver himself up, the police officer or other person authorized to execute the warrant may, in the presence of two or more respectable residents of the place, break open the zenanah, and execute the process intrusted to him, giving notice at the same time to any women in the zenanah that they are at liberty to withdraw.

LIII.

Breaking of doors, &c. for offences not previously provided for.

It shall be at the discretion of the Magistrate to direct, in any particular case, that a warrant of arrest shall be executed as provided in Articles XLIX., LI., and LII., for any other offence than the offences for which a warrant may issue on complaint.

LIV.

Party arrested to be brought immediately to the authority mentioned in the warrant,

After arrest made, the officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested to the Magistrate or other authority mentioned in the warrant.

LV.

as soon as may be practicable.

If, after arrest made, circumstances render it impracticable to bring the person arrested immediately before the Magistrate, the officer or other person executing the warrant shall detain the person arrested in custody in the meantime, and bring him before the Magistrate as soon as his doing so shall become seasonably practicable.

LVI.

No officer or other person, after the arrest of any suspected person, is to offer to him any inducement, by threat or promise or otherwise, to make any disclosure, but shall, when necessary, apprize him of the cause of arrest, and leave him free to speak or keep silence; and no such officer or other person shall after such arrest prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

No threat, promise, or caution, as to disclosure by party arrested.

CHAPTER IV.

Of Arrest without Warrant.

LVII.

A police officer or other person who sees any offence committed for which a warrant may issue on complaint, may, without warrant, arrest the offender.

Arrest on view.

LVIII.

A police officer may, without warrant, arrest of his own authority a person against whom a reasonable complaint of an offence for which a warrant may issue on complaint is made, or who may be found with stolen goods in his possession.

On complaint, or finding with stolen goods.

LIX.

A police officer, or other person, may, without warrant, arrest a proclaimed offender, or a person against whom a hue and cry has been raised of his having been concerned in a recent offence.

A proclaimed offender: hue and cry.

LX.

If a person liable to arrest without warrant under the foregoing rules shall enter into and conceal himself in a dwelling house, the person who might otherwise have arrested shall take such precautions as may be necessary to prevent the escape of the accused, and send immediate information to the Magistrate or darogha of police; but no house shall be broken into for the purpose of arresting any person without a warrant.

A party liable to arrest concealing himself.

LXI.

A police officer may, of his own authority, interpose for the prevention of a breach of the peace committed or attempted to be committed in his view; and in the event of disobedience or resistance may, without warrant, arrest the offender.

Breach of the peace.

LXII.

A police officer may apprehend any person who obstructs him while in the execution of his duty, and carry him before the Magistrate, or before the head officer of the police division.

Obstruction of a police officer in his duty.

LXIII.

It is not necessary to notify the cause of arrest where the person is in the actual commission of any offence, or where fresh pursuit is made after any such person, who, being disturbed, makes his escape.

When it is not necessary to notify cause of arrest.

LXIV.

A police officer or other person, having arrested a person for an offence, is to take or send him before the Magistrate or the head officer of the police division, without unnecessary delay.

Party arrested to be taken immediately before the proper authority

LXV.

Where any offence is committed in the presence of any Magistrate, he may by word of mouth command any other person to arrest the offender, and may thereupon commit him, or, at his discretion, where the offence is bailable, may admit him to bail.

Arrest for an offence committed in the presence of a Magistrate.

CHAPTER V.

Of Escape and Re-taking.

LXVI.

If a person lawfully arrested on a criminal information shall escape or be rescued, it shall be lawful for the person from whose custody such prisoner

Person arresting may retake on escape, and deal with

the party arrested as on original taking.

so escaped or was rescued to make fresh pursuit, and retake him in any place, either within or without the jurisdiction where he was so in custody, and on any day, and at any time of the day or night, and to deal with him as he might have done on an original taking.

LXVII.

May adopt the same measures as on original taking.

In order to retake any person, within the meaning of the last preceding article, the person so making fresh pursuit as therein is mentioned may adopt the same measures as he might have done on the original taking.

CHAPTER VI.

Of Search Warrant.

LXVIII.

When grantable by a Magistrate.

Whenever a Magistrate, having jurisdiction in respect of a supposed offence, shall consider that the production of any thing or things will be essential to the conduct of an inquiry into such offence, he may grant his warrant to search for such thing or things, and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in any dwelling or dwellings, place or places. In such case the Magistrate shall, if he think right, specify in his warrant the dwelling or dwellings, place or places, or part or parts thereof, to which only the search shall extend.

LXIX.

How to be directed.

The Magistrate shall direct his warrant to the police darogha within whose jurisdiction the dwelling or dwellings, place or places, required to be searched, are situated, or to any other public and registered officer of police to whom the Magistrate may think fit to commit the execution of that duty. A warrant directed to a darogha may, in the event of the darogha not being able to proceed in person, be executed by any officer subordinate to such darogha, above the rank of burkundaz.

LXX.

When a Magistrate may require a Magistrate of another district to issue a search warrant.

A Magistrate may require the Magistrate of another district to issue a search warrant in any case in which he may issue such warrant himself.

LXXI.

When a Magistrate may grant a search warrant out of his jurisdiction.

In cases of emergency, a Magistrate may grant his warrant for the search of any thing or things concealed, or supposed to be concealed, in a dwelling or dwellings, place or places, out of his jurisdiction, the production of such thing or things being essential to the conduct of an inquiry into an offence committed within his jurisdiction. When a Magistrate grants a warrant under this article, he shall inform the Magistrate of the district in which the dwelling or dwellngs, place or places, to be searched, are situated.

LXXII.

Search warrant when grantable by a darogha.

Whenever a darogha shall consider that the production of any thing or things will be essential to the conduct of an inquiry into any offence which he is authorized to inquire into, he may grant his warrant to search for such thing or things in any dwelling or dwellings, place or places, within his division, which shall be specified in his warrant; and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in such dwelling or dwellings, place or places.

LXXIII.

How to be executed.

The darogha shall, if practicable, conduct the search in person; but if unable to proceed in person, shall direct his warrant to any police officer of his division above the rank of burkundaz.

LXXIV.

When a darogha may require a darogha of another division to issue a search warrant.

A darogha may require the darogha of another division, whether subject to the same Magistrate as himself or to the Magistrate of any other district, to issue a search warrant in any case in which he may issue such warrant himself.

LXXV.

The darogha, when not specially instructed by the Magistrate, shall transmit all representations made to him regarding the receipt or concealment of any thing or things the production of which is essential to the conduct of an inquiry into an offence, at or before the time when he proceeds to the search, for the information of the Magistrate, and for any orders which he may deem it necessary to issue on the subject.

Representations regarding anything for which search is to be made to be sent to Magistrate.

LXXVI.

The search shall be made in the daytime, except in cases of great emergency, and where the information is positive, and not on suspicion only, when it may be made either in the daytime, or in the night-time.

When the search is to be made.

LXXVII.

If the door be shut, the person charged with the execution of the warrant may proceed to break open the door, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of doors.

LXXVIII.

If the place ordered to be searched is a zenanah or female apartment in the actual occupancy of women, the officer charged with the execution of the warrant shall give notice to any women in the zenanah that they are at liberty to withdraw; and, after giving such notice, and allowing a reasonable time for the women to withdraw, such officer may enter the zenanah for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

Breaking of a zenanah or female apartment.

LXXIX.

The search is to be made in the presence of three or more respectable inhabitants of the place in which the dwelling or dwellings, place or places searched may be situated, and such persons shall subscribe their names to the report made to the Magistrate; and the occupant of the house, or owner of the house, or some person in his behalf, shall in every instance be permitted to attend during the search.

Search to be made in the presence of witnesses. Occupant of the place searched may attend.

LXXX.

All property which is claimed as having been stolen, as well as all property suspected to have been stolen, found on persons accused of robbery or theft, or which is seized by police officers under suspicious circumstances, as also anything the production of which is essential to the conduct of an inquiry into an offence, shall be forwarded without delay, together with a despatch, to the Magistrate. A copy of the despatch being registered, the original is to be given to the officer charged with the conveyance of the property, to be delivered to the nazir, or other proper officer, on his arrival at the station of the Magistrate.

Property, &c. to be sent to the Magistrate.

CHAPTER VII.

PRELIMINARY INQUIRY BY THE POLICE.

LXXXI.

A darogha of police shall not inquire into any of the following offences punishable under the Penal Code, unless specially authorized by the Magistrate to do so, viz.:—

Offences into which the police officers may not inquire without special authority.

- Offences under Chap. VIII., provided that it shall be competent to a darogha to apprehend and send to the Magistrate any person who may be found in his division in the commission of the offence punishable under Clause 150.
- Offences under Chap. IX., except the offences punishable under Clauses 164, 166, 168, 171, 173, 175, and 182; provided that it shall be competent to a darogha to inquire into any offence under Chap. IX., committed in contempt of his own authority.
- Offences under Chap. X., except the offences punishable under Clauses 201, 203, 204, and 205.
- Offences under Chap. XI., Clauses 211, 216, 225, 226, 227, and 228.
- Offences under Chap. XIII.

Offences under Chap. XIV., except the offences punishable under Clauses 257, 265, 267, 269, 270, and 273.
Offences under Chap. XV.
Offences under Chap. XVI.
Offences under Chap. XVII.
Offences under Chap. XVIII., Clauses 312, 313, 318, 325, 332, 333, 334, 335, 336, 337, 342, 347, 348, 350, 351, 352, and 358.
Offences under Chap. XIX., Clauses 369, 370, 373, 374, 384, 385, 387, 388, 394, 395, 396, 397, 398, 400, 401, 402, 403, 404, 405, 406, and 425.
Offences under Chap. XX., Clauses 453 and 454.
Offences under Chap. XXI.
Offences under Chap. XXII.
Offences under Chap. XXIII.
Offences under Chap. XXIV.
Offences under Chap. XXV.
Offences under Chap. XXVI.

LXXXII.

When the darogha may issue his warrant.

Upon complaint duly made before a darogha of police having jurisdiction in the case, against any person for committing any offence, other than the offences described in the provisions of the Penal Code specified in the last preceding article. and which offence is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for tht darogha to issue his warrant to apprehend such person, and to cause him to be brought before such darogha.

LXXXIII.

May issue summons instead of warrant.

Provided, that in all cases it shall be lawful for such darogha before whom such a complaint is made, instead of issuing his warrant in the first instance to apprehend the person so complained against, to issue his summons, recording his reason for so issuing his snmmons, directed to such person, requiring him to appear before such darogha.

LXXXIV.

When darogha shall issue summons.

Upon a complaint duly made before a darogha of police having jurisdiction in the case, against any person for committing any offence into which he is authorized to inquire, and which is punishable with imprisonment for a period not exceeding six months, the darogha shall issue his summons to such person, requiring him to appear before such darogha.

LXXXV.

When the head officer of police may stay issue of process.

In the event of its appearing to the darogha that for any special reason the issue of process for causing the attendance of the accused should be stayed until the case be reported for the orders of the Magistrate, such report shall be made without delay, and the issue of process against the accused in the meantime suspended. On the receipt of the darogha's report, it shall be at the discretion of the Magistrate, if he is of opinion that there are grounds for proceeding with the case, to direct the darogha to proceed with it, or to proceed with it as if the complaint had been made before himself.

LXXXVI.

Witnesses to be summoned.

Upon the issue of process for causing the attendance of the accused, the darogha shall at the same time issue summonses for the attendance of any persons who appear from the statement of the person making the complaint to be acquainted with the facts and circumstances of the case.

LXXXVII.

Darogha may proceed in person, or depute an officer to investigate.

Nothing contained in the foregoing articles shall be construed to prevent a darogha from proceeding in person, or deputing a fit person from among the officers acting under him, to ascertain on the spot the facts and circumstances of any case into which he is authorized to inquire.

LXXXVIII.

Police may pursue offenders into other jurisdictions.

It shall be lawful for the darogha or other police officer to pursue persons accused of the offences referred to in Article LXXXII. into the jurisdiction of other daroghas, whether subject to the same Magistrate as himself or to the Magistrate of any other district.

LXXXIX.

The examination of witnesses by the police shall be taken in the presence of the darogha, or, in the event of his absence, in the presence of any officer above the rank of burkundaz, and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer, but in that of a brief narrative, which shall be signed by the person deposing, and transmitted to the Magistrate, as herein-after provided, under the signature of the police officer by whom the inquiry may have been made. Examination of witnesses.

XC.

It shall not be competent to a darogha or other police officer to examine a person accused of a criminal offence, or to reduce to writing any admission or confession of guilt which he may propose to make. Police officers not to examine the accused.

XCI.

The darogha, or other police officer, shall complete the inquiry with as little delay as possible, and if the darogha himself have made the inquiry, he shall forward the accused to the Magistrate, under the custody of one or more burkundazes, provided the evidence is such as to warrant that course, and the offence be not bailable, and shall bind over the prosecutor and witnesses to appear on or before a fixed day before the Magistrate of the district. If a subordinate police officer have made the inquiry, he shall submit his proceedings to the darogha, who shall then proceed as if he had made the inquiry himself. Inquiry by the police.

XCII.

Provided, that it shall not be lawful for the darogha or other police officer to detain the accused in custody, without the special orders of the Magistrate, for a longer period than forty-eight hours; and provided also, that it shall be competent for a darogha or other police officer, on his being satisfied that there are grounds for believing that the accusation is well founded, to forward the accused to the Magistrate at any period of the inquiry before the expiration of forty-eight hours from the apprehension of the accused. The darogha shall forward with the accused a short despatch stating the offence for which the accused has been arrested. Accused not to be detained by the police beyond 48 hours, without special authority.

XCIII.

If it shall appear to the darogha that there is not sufficient evidence to warrant the transmission of the accused to the Magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and submit his proceedings for the orders of the Magistrate. Darogha how to proceed in cases of deficient evidence.

XCIV.

In all cases, in submitting his proceedings to the Magistrate, the darogha shall forward the statement of the person complaining and the depositions of the witnesses, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any recapitulation of evidence or expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produceb efore the Magistrate. The darogha shall further state whether he has forwarded the accused in custody, or released him on bail, or on his own recognizance. Proceedings of the darogha, of what to consist.

XCV.

Persons accused of the commission of any of the offences entered in the third column of Schedule A. as not bailable, shall not be admitted to bail, provided that there appear reasonable grounds for believing that such persons have been guilty of the offence imputed to them; but in all cases of persons accused of any other offences, if sufficient bail be tendered for appearance before the Magistrate, the darogha shall accept such ball, and immediately release the party apprehended. Bail.

XCVI.

In cases of manifest necessity, when the darogha may be apprehensive of danger to the public peace by the enlargement of a person arrested for rioting or other bailable offence, without security being taken for his peaceable conduct, the person so arrested shall be required, in addition to the bail for his appearance, to furnish security for keeping the peace; and the surety or sureties shall execute a recognizance in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same. In default of his furnishing the required security, the accused shall be forwarded under custody to the Magistrate. When security for keeping the peace to be required.

XCVII.

Police to report all apprehensions.

The officers of police shall report to the Magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons may have been admitted to bail or otherwise; and no person who has been apprehended shall be discharged, except on bail, or on his own recognizance, or under the special order of the Magistrate.

XCVIII.

Bail not to be excessive. Terms of security.

The bail to be taken for appearance before the Magistrate, in pursuance of Article XCV. shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the Defendant before the Magistrate on or before a fixed day, to answer the complaint.

XCIX.

Prosecutors and witnesses to execute recognizance to appear before the Magistrate.

Prosecutors and witnesses, whose attendance may be necessary at the Criminal Courts, shall execute recognizances before the police officers, to appear before the Magistrate on a specific day, which shall be the day whereon the accused may be bound to appear, if he shall have been admitted to bail, or on the day on which he may be expected to arrive at the Magistrate's place of residence, if he is to be forwarded thither under custody. The police officer in whose presence the recognizance may be executed shall forward it with his report to the Magistrate, and shall deliver to the prosecutor or witness a despatch, which the prosecutor or witness shall be required to deliver in person to the Magistrate or the nazir of his Court, unaccompanied by any officer of police.

C.

Witnesses not to be subjected to restraint. Recusant witness may be forwarded in custody.

The police officers shall not subject witnesses to any restraint or unnecessary inconvenience, nor require them to give any other security for their appearance than their own recognizances; but if any witness shall refuse to attend, or to execute the recognizance directed in the last preceding article, it shall be competent to the darogha to forward such witness under custody to the Magistrate.

CI.

By whom the powers of the darogha may be exercised in his absence or illness.

The powers to be exercised by the darogha under the foregoing rules shall be exercised in the event of his absence or illness, by the head police officer present at the police station above the rank of burkundaz.

CII.

Service of process issued by the police.

All processes in criminal cases cognizable by the police officers shall be served by the burkundazes at the police station, without any charge to the parties or witnesses.

CIII.

Penalty for taking unauthorized cognizance of offences. Magistrate may direct investigation at his discretion.

The police officers are strictly prohibited, on pain of dismissal from office, from taking cognizance of any of the offences described in the provisions of the Penal Code specified in Article LXXXI., except under the special orders of the Magistrate. But it shall be at the discretion of the Magistrate to issue such orders to the officers of police, in regard to the investigation of criminal cases, as he shall think proper, and such officer shall be bound to obey the orders of the Magistrate.

CIV.

How darogha is to proceed in regard to cases triable by the Subordinate Criminal Courts.

When a Subordinate Criminal Court has been authorized to receive cases coming within its jurisdiction on the report of a police officer, the darogha shall forward the accused and submit his proceedings to such Court, and shall bind over the prosecutor and witnesses to appear before the same.

CHAPTER VIII.

Of Contempts and Disobedience of Orders.

CV.

Disobedience of orders, &c. under Clause 149 of the Penal Code, how punishable.

Any Judge, or Court of Justice, or Magistrate shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their offices, and to punish the persons committing them as therein authorized.

The offence is, that of a public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.

CVI.

Contempt of Court under Clause 197.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause.

The offence is that of insulting or interrupting a Court of Justice.

CVII.

Contempt of lawful authority under Chapter IX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto.

Chapter IX. of the Penal Code is entitled "Contempts of the lawful Authority of Public Servants." The rules of this Chapter of the Code of Procedure are confined to Judges, Courts of Justice, and Magistrates; the provisions of Clause 149 and of Chapter IX. of the Penal Code are more general; but it has been considered expedient to leave to the Government of India the extension of these or similar rules to other public servants.

CVIII.

Ordinary powers of punishment not to be exceeded. Punishment may be remitted on submission of the offender.

Provided that no Magistrate or Judge of a Subordinate Crininal Court shall exceed his ordinary powers of punishment in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that where a person has been sentenced to punishment under the provisions of the last preceding article, for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge, Court of Justice, or Magistrate, to remit the punishment, on the submission of the offender to the order or requision of such Judge, Court of Justice, or Magistrate.

CHAPTER IX.

Criminal Charges by the Advocate General.

CIX.

Advocate General may file criminal charges,

It shall be competent to the Advocate General of the Bengal Presidency, at his discretion, to file a criminal charge for any offence, in any Criminal Court; also to withdraw such charge, and to file another.

CX.

To follow the rules relating to charges.

The rules relating to the description of the offence in the case of charges by the Magistrate shall be applicable to criminal charges filed by the Advocate General.

CHAPTER X.

Prosecutions in certain Cases.

CXI.

Prosecutions for certain offences not to be instituted but under authority of Government, or of a duly empowered officer.

Charges of offences punishable under Chapters V., VI., XI., and XVI. of the Penal Code shall not be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Governor General in Council, or by order of, or under authority from, a public officer empowered by the Governor General in Council to direct or authorize such prosecution, or unless instituted by the Advocate General.

The offences are as follow:—

Chapter V. Offences against the state;
" VI. Offences relating to the army and navy;
" XI. Offences relating to the revenue;
" XVI. Illegal entrance and residence into the territories of the East India Company.

CXII.

Prosecution for certain offences under Chapter IX. of the Penal Code not to be instituted but with the sanction of the public servants concerned.

In cases of contempt of the lawful authority of public servants, and other offences against public servants, as such, described in Chapter IX. of the Penal Code, except the offence described in Clause 186, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the public servants concerned, except when they are inferior ministerial servants, in which case the prosecution shall not be instituted but with the sanction of their official superiors.

CXIII.

For certain offences under Chapter X. of the Penal Code, but with the sanction of the authority before which the offence was committed.

In cases of offences against public justice, described in Clauses 190, 191, 192, 193, 194, 195, 196, and 197 of Chapter X. of the Penal Code, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the Court of Justice, Judge, or Magistrate, before which or whom, or against which or whom, such offence was committed.

CXIV.

Mode of proceeding in cases mentioned in the two last preceding articles.

When a Court of Justice, Judge, or Magistrate is of opinion that there is sufficient ground for bringing any person to trial on a charge of any of the offences referred to in the last two preceding articles, the Court, or Judge, or Magistrate, after making such preliminary inquiry as may be necessary, may send the case for investigation to the Magistrate, who shall proceed to inquire into the case, and pass such orders thereon as he may deem proper; provided that it shall be competent to the High Court or a Court of Session to charge a person for any such offence committed before it, or under its own cognizance, and to try such person upon its own charge.

CHAPTER XI.

Of preliminary Inquiry by the Magistrate in Cases triable by the High Court or Session Court.

Complaint and issuing of Process for causing the Attendance of the Accused.

CXV.

Magistrate may issue his warrant.

In all cases where a complaint shall be made before a Magistrate having jurisdiction in the case that any person has committed, or is suspected to have committed, any of the offences specified in Schedule A. as triable exclusively by the High Court or Court of Session, or which, in the opinion of the Magistrate, is one that ought to be tried by the High Court or Court of Session, it shall be lawful for such Magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint; provided also, that in any case which is triable exclusively by the High Court or Court of Session under the provisions of Clauses 3, 4, and 5 of Article X. of the rules relating to the "Criminal Courts of Original Jurisdiction," the Magistrate shall proceed in the same manner as if the case had been triable by himself.

May issue a summons instead of a warrant.

In what cases he is to proceed as if the case had been triable by himself.

CXVI.

Postponement of issue of process.

If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the Magistrate to believe the charge well founded, and the offence be of the nature described in Article CXV., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

May dismiss the complaint.

CXVII.

It shall be at the discretion of the Magistrate, in issuing his warrant for the arrest of any party against whom a complaint has been made, to direct that if such party be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release the party from custody. In the event of bail being given, the officer shall forward the recognizance to the Magistrate.

Magistrate may direct bail to be taken.

CXVIII.

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the Magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

Magistrate may dispense with the personal attendance of the accused.

CXIX.

Where any such person as is mentioned in Article XXXVII. or Article XXXVIII. shall be apprehended out of the jurisdiction of the Magistrate granting the warrant against him, and carried before the Magistrate who indorsed such warrant, the Magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the Magistrate granting the warrant, shall take bail of such person for his appearance before the Magistrate granting the warrant, release the person from custody, and forward the recognizance to the Magistrate granting the warrant.

Arrest on warrant indorsed by a Magistrate of another district.

CXX.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a Magistrate he cannot be found, the Magistrate shall, on proof thereof, cause a written proclamation requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he has usually resided. In case the party does not appear, and deliver himself up within the period fixed, it shall be lawful for the Magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this Article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual seizure by an officer of the Magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the Magistrate shall deem proper under the circumstances of each case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Proclamation for an absconding party.

Attachment of property.

Property after six months to be at the disposal of Government.

Summoning, &c. of Witnesses.

CXXI.

The Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons, under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said Magistrate, to testify what they know concerning the complaint made against the accused party.

Summons to a witness to attend and give evidence.

CXXII.

If he do not obey the summons, then warrant.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the Magistrate to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid; and, if necessary, such warrant may be backed by the Magistrate of another district, in order to its being executed out of the jurisdiction of the Magistrate who shall have issued the same.

CXXIII.

In what cases warrant in the first instance.

If the Magistrate shall be satisfied by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

CXXIV.

Refusing to answer, may be committed to custody.

If any person so summoned or brought before a Magistrate shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the Magistrate may, by warrant under his hand and seal, commit the person refusing to custody for any term not exceeding seven days, unless he shall in the meantime consedt to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal he may be dealt with according to the provisions of Article CVII. or Article CXIV.

Examination of Parties and Evidence.

CXXV.

Examination of the complainant and witnesses for the prosecution.

When a case is brought before a Magistrate in which a person is charged with an offence which is triable exclusively by the High Court or Court of Session, or which, in the opinion of the Magistrate, is one that ought to be tried by the High Court or Court of Session, the Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall prevent the Magistrate from examining the Defendant at any stage of the inquiry, as provided in Article CXXX.

CXXVI.

To be in the presence of the Defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the Defendant, and the Defendant shall be permitted to cross-examine them.

CXXVII.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the Magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the Magistrate. In case the witness shall refuse to sign the deposition, the Magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Magistrate shall think fit to make. It shall be at the discretion of the Magistrate to take down or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a Prosecutor or Defendant in the case shall require it. The Magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CXXVIII.

It shall not be competent to the Magistrate to receive in evidence against the Defendant any written admission or confession of guilt, or any statement made by him to the darogha or other officer of police, and by him reduced into writing. Magistrate not to receive any written admission or confession of guilt, made to the police.

See Article XCI.

CXXIX.

Nothing contained in the last preceding Article shall prevent the Magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant. but may receive evidence of a police officer as to unrecorded admission of guilt.

CXXX.

It shall be at the discretion of the Magistrate to examine the Defendant at any stage of the inquiry from the time of the Defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the inquiry is completed, and the Defendant either discharged, or committed or held to bail to take his trial before the High Court or the Court of Session, as the case may be. Examination of Defendant.

CXXXI.

If the Defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the Magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness. Magistrate how to proceed in case of confession.

CXXXII.

No influence, by means of any promise or threat, shall be used to any Defendant under examination to induce him to disclose or withhold any matter within his knowledge. No influence to be used to induce disclosures.

CXXXIII.

The examination of the Defendant, including every question put to him, and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the Defendant refuses to sign, his reason shall be stated in writing as he gives it, at the foot of the examination, and whether the Defendant signs it or not the examination shall be attested by the signature of the Magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the Defendant's statement. No other attestation shall be necessary to render the examination available as evidence at the trial of the Defendant, and such attestation shall be admitted without proof of the signature to it, unless the trying Court shall see reason to doubt its genuineness. Examination of the Defendant, how to be recorded. Examination to be admitted as evidence on the attestation of the Magistrate.

CXXXIV.

The Defendant, on examination, may be committed or held to bail by the Magistrate for any offence which from the evidence he may appear to have committed. Defendant may be detained for any offence committed by him.

CXXXV.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the Magistrate for the purpose of examination, for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made. Any person attending may be detained for any offence committed by him.

CXXXVI.

It shall be at the discretion of the Magistrate to summon and examine any evidence that may be offered in behalf of the Defendant to answer or disprove the evidence against him. Discretionary with the Magistrate to take evidence for the defence.

CXXXVII.

Witnesses for the defence.

The provisions of Articles CXXII., CXXIII., CXXIV., and CXXVII. shall be applicable to witnesses named in support of the defence.

Conditional Pardon.

CXXXVIII.

Magistrate may tender a pardon in certain cases.

In cases of murder, dakoity, robbery, thuggee, offences relating to coin, and forgery, as well as in cases of housebreaking and theft, attended with circumstances of aggravation, it shall be lawful for the Magistrate, recording his reasons for the same, to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, on condition of their making a full, true, and fair disclosure of the whole of the circumstances within their knowledge relative to the crime committed, and the persons concerned in the perpetration thereof, or of their pointing out (in cases of robbery and theft) the mode in which the stolen property may have been disposed of.

CXXXIX.

When High Court or Session Court may direct the commitment of a person to whom a pardon may have been tendered.

It shall be competent to the High Court as a Court of original jurisdiction, to the Session Court, or to the High Court as a Court of reference, to direct the commitment of any person to whom a pardon may have been offered under the provisions of the last preceding article, should it appear that such person has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information.

CXL.

When High Court or Session Court may direct a tender of pardon.

In like manner it shall be competent to the High Court as a Court of original jurisdiction, or to a Session Court at the time of trial, and also to the High Court as a Court of reference, to instruct the Magistrate to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, with the view of obtaining his or their evidence on the trial.

CXLI.

High Court may revise proceedings when a pardon may have been tendered.

It shall be competent to the High Court to revise the proceedings of the Magistrates, in any case in which a pardon may have been tendered to any person, and to annul the orders passed on such proceedings, should it appear to the High Court that a pardon had been granted on insufficient grounds.

Bail.

CXLII.

Bail not to be taken for certain offences if proof of guilt.

When may be taken.

Where any person shall appear or be brought before a Magistrate accused of any of the offences entered as not bailable in Schedule A. of this Code of Procedure, such person shall not be admitted to bail, provided that there appear reasonable grounds for believing that he has been guilty of the crime imputed to him; but if the evidence given in support of the accusation shall, in the opinion of the Magistrate, not be such as to raise a strong presumption of the guilt of the person accused and to require his committal, or such evidence shall be adduced on behalf of the person accused as shall, in the opinion of the Magistrate, weaken the presumption of his guilt, but there shall appear to the Magistrate in either of such cases to be sufficient ground for judicial inquiry into his guilt, the person accused shall be admitted to bail.

CXLIII.

When bail shall be taken.

Where any person shall appear or be brought before a Magistrate accused of any of the offences entered as bailable in Schedule A. of this Code of Procedure, he shall at once be admitted to bail.

CXLIV.

Where a Magistrate shall admit any person accused of any offence, or on suspicion thereof, to bail, a recognizance in such sum of money as the Magistrate shall think sufficient is to be entered into by the person so accused, and one or more sureties conditioned that such person shall attend during the preliminary inquiry, and, if required, shall appear at the then next session of the High Court or the Session Court, as the case may be, to answer the charge. Recognizance of accused and sureties.

CXLV.

If through mistake or fraud insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused may be ordered by the Magistrate to find sufficient sureties, and in default may be committed to prison. Insufficient bail.

CXLVI.

If the accused cannot presently find sureties, he shall be admitted to bail upon his doing so at any time afterwards before conviction. Bail may be taken any time before conviction.

CXLVII.

After the recognizances shall have been duly entered into, the Magistrate, in case the accused shall have appeared voluntarily, or shall be in the custody of some officer, shall thereupon discharge him; and in case he shall be in some prison or other place of confinement, shall issue a warrant of discharge to the gaoler or other person having him in his custody, who shall thereupon liberate him. Discharge on bail.

CXLVIII.

Those who may have become bail for any person may discharge themselves by taking him and surrendering him before the Court by which he has been bailed, and he may thereupon be committed to prison by the said Court. How persons who have bailed may discharge themselves.

CXLIX.

In such cases it shall be competent to such Defendant to find new sureties. New sureties.

CL.

Whenever by reason of default of appearance of the party executing the personal recognizance the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty in the mode prescribed for the satisfaction of decrees of the Civil Court. Proceedings to compel payment of penalty by accused.

CLI.

Whenever by reason of default of appearance by the party bailed the Magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid; and, if no sufficient cause shall be shown, the Magistrate shall proceed to recover the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court, and if the penalty be not paid and cannot be recovered by such attachment and sale, and such surety or sureties shall be liable to confinement, by order of the Magistrate, in the civil gaol, during a period not exceeding six months. Proceedings to compel payment of penalty by sureties.

Warrant of Commitment.

CLII.

Every warrant of commitment shall be directed to some gaoler, keeper, or other officer or person having authority to receive and keep prisoners, either by his name or official description, and shall command the person to whom it is so directed to receive the prisoner and keep him until he be discharged in due course of law. Warrant of commitment, how to be directed, &c.

CLIII.

Warrant, what to contain.

The warrant (which must be drawn up before the party is sent to prison) shall set forth the name of the Defendant in full, if known; but if it be not known, then a description of his person, stating the refusal to tell his name; and shall state in substance the offence in respect of which the prisoner is charged, the authority of the committing officer, and the place of imprisonment.

CLIV.

With whom to be lodged.

The warrant of commitment shall be lodged with the gaoler, if he be in the gaol; and if he be not, with his deputy; and if he has no deputy, it may be lodged with any officer of the gaol then being in the gaol.

Adjournment.

CLV.

When Magistrate may adjourn the inquiry.

If from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of witnesses for any time, it shall be lawful for the Magistrate, by a written order, from time to time to adjourn the inquiry, and to remand the person accused for such time as shall be deemed reasonable, not exceeding fifteen days; provided that the Magistrate may order such accused person to be brought before him at any time before the expiration of the time for which such accused person shall be so remanded, and the gaoler or other officer in whose custody he shall then be shall duly obey such order; provided also, that, instead of detaining the accused person in custody during the period for which he shall be so remanded, the Magistrate may discharge him upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance at the time and place appointed for the continuance of such examination.

Discharge of the Defendant.

CLVI.

When Defendant to be discharged.

When a Magistrate finds that there are not sufficient grounds for putting the Defendant on his trial on a formal charge, or for remanding him, he shall discharge him.

Commitment, &c. of the Defendant for Trial.

CLVII.

When Defendant to be committed for trial.

The Defendant shall be sent for trial before the High Court, or before the Session Court, as the case may be, when evidence has been given before the Magistrate which appears to be sufficient to convict the Defendant of an offence which is triable exclusively by the High Court or the Court of Session, or which, in the opinion of the Magistrate, is one that ought to be tried by the High Court or the Court of Session.

CLVIII.

Copy of charge to be furnished to Defendant.

Witnesses for the defence on the trial.

As soon as the charge on which the Defendant is to be tried has been prepared, it shall be read to the Defendant, and a copy or translation of it shall be furnished to him. The Defendant shall then be at liberty to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the High Court or the Session Court, as the case may be. The Magistrate shall receive the list, and summon the witnesses to appear before the Court before which the Defendant is to be tried. This, however, shall not prevent a person committed from giving in a further list of witnesses, and having them summoned at any time between the commitment and the trial. The provisions of Articles CXXII. and CXXIII., so far as they relate to the compulsory attendance of witnesses, shall be applicable to witnesses named by the Defendant in the lists above mentioned.

CLIX.

When the preliminary inquiry is concluded the Defendant shall be entitled to copies of the depositions on the record of the same without delay, if he demands them a reasonable time before the trial. Copies of depositions to be furnished to Defendant.

CLX.

Upon the commitment of the Defendant to take his trial before the High Court or the Court of Session, as the case may be, the Magistrate shall issue a warrant of commitment, stating the offence in the same form as the charge. Warrant of commitment.

CHAPTER XII.

On the Charge.

CLXI.

When the Magistrate has resolved to send the Defendant before the High Court or Court of Session for trial, or put him on his trial before himself for any offence punishable under the Penal Code with imprisonment for a period exceeding six months, he shall make a written instrument under his hand and seal, declaring with what offence the Defendant is charged, and within the cognizance of what Court the offence is, and shall direct that the Defendant be tried by the said Court on the said charge. In all cases sent for trial to the High Court or Court of Session the Magistrate shall send a copy of this instrument, with the proceedings, to the public prosecutor, where such officer has been appointed, otherwise to the Court before which the Defendant is to be tried. What the charge is to contain.

CLXII.

The charge shall describe the imputed offence as nearly as possible in the language of the clause of the Penal Code under which such offence is punishable, and shall refer to such clause by the number of the clause. How the offence is to be described.

CLXIII.

It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the General Exceptions contained in the third chapter of the Penal Code, but every charge shall be understood to assume the absence of all such circumstances. Absence of General Exceptions under the Penal Code to be assumed.

CLXIV.

It shall not be necessary at the trial, on the part of the prosecutor, to prove the absence of such circumstances in the first instance; but the Defendant shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may be given on the part of the prosecutor. Evidence as to General Exceptions.

CLXV.

Where the clause itself referred to in the charge contains an exception, not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting such exception so contained in the clause, without a distinct denial of the existence of such circumstances. Clause of the Penal Code containing an exception, not a General Exception.

CLXVI.

The charge may contain one or more heads.

Charges containing One Head.

CLXVII.

Where a charge contains one head only, the form shall be as follows, or to the same effect: Heads of charge.

Forms of Charge.

(a) I, A. [*name and office of Magistrate, &c.*], declare that there is hereby made against Z. the charge;

On Clause 109. (*b*) That he has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th clause of the Penal Code, (*c*) and within the cognizance of the [*style of the Court*].

(*d*) And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

Where the Magistrate tries the case, there must be substituted for (*c*): within my cognizance; and *the words* "by the said Court" *in* (*d*) *may be omitted.*

To be substituted for (*b*):

On Clause 112 applied to Clauses 111 and 319. 2. That he has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th clause of the Penal Code, and, by committing such offence, has also committed an offence punishable under the 319th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has, by reason of the premises, become liable to cumulative punishment under the 112th clause of the Penal Code.

On Clause 129. 3. That he has committed the offence of rioting, and has thereby committed an offence punishable under the 129th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 138. 4. That he has, being a public servant, directly accepted from a party, for another party, a gratification, other than legal remuneration, as a motive for his, the said Z.'s, forbearing to do an official act, and has thereby committed an offence punishable under the 138th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 303. 5. That he has committed voluntary culpable homicide in defence, and has thereby committed an offence punishable under the 303d clause of the Penal Code, and within the cognizance of [*style of the Court*].

On Clause 306. 6. That he has previously abetted by aid the commission of suicide by a person in a state of intoxication, and has thereby committed an offence punishable under the 306th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 308. 7. That he has omitted what he was legally bound to do, with such knowledge and under such circumstances that, if he by that omission had caused death, he would have been guilty of murder, and has carried that omission to such a length as, at the time of carrying it to that length, he contemplated as sufficient to cause death, and has thereby committed an offence punishable under the 308th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 319. 8. That he has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 319th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 377. 9. That he has committed robbery, and has thereby committed an offence punishable under the 377th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 379. 10. That he has committed dakoity, and has thereby committed an offence punishable under the 379th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 388. 11. That he, being a public servant in the post office department, and being, as such, intrusted with the keeping of a packet, has committed criminal breach of trust by misappropriating a thing contained in such packet, and has thereby committed an offence punishable under the 388th article of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 435. 12. That he has committed lurking house tresspass by night, and has thereby committed an offence punishable under the 435th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clause 436 applied to Clauses 364 and 435. 13. That he has committed lurking house trespass by night, being an offence punishable under the 435th clause of the Penal Code, in order to the committing of theft, and has actually committed such theft, being an offence

punishable under the 364th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has by reason of the premises become liable to cumulative punishment under the 136th clause of the Penal Code.

And the same form shall be followed, as nearly as may be, in charges with one head only, upon other clauses of the Penal Code.

Charges containing Two or more Heads.

CLXVIII.

When it appears to the Magistrate that the facts which can be established in evidence show a case falling within two or more clauses of the Penal Code, the charge shall contain two or more heads, each of which shall be applicable to one of such clauses. Charge in cases falling within two or more clauses of the Penal Code.

CLXIX.

When it appears to the Magistrate that the facts which can be established in evidence show the commission of two or more offences punishable under the same clause of the Penal Code, the charge shall contain two or more heads charging such offences respectively. Two or more offences punishable under the same clause.

CLXX.

When it appears to the Magistrate that the facts which can be established in evidence show a case within some one of two or more clauses of the Penal Code, but it is doubtful which of such clauses will be applicable, or show the commission of one of two or more offences punishable under the same clause of the Penal Code, but it is doubtful which of such offences will be proved to have been committed, the charge shall contain two or more heads, framed respectively on each of such clauses, or charging respectively each of such offences accordingly. Cases of doubt as to the clause whic is applicable, or the offence which may be proved.

CLXXI.

When a charge contains more heads than one, the form shall be as follows, or to the same effect: Form of charge of more than one head.

Forms of Charge.

I, A. [*name and office of Magistrate, &c.*] declare, that there is hereby made against Z. the charge:

First: That he has, knowing a coin to be counterfeit, delivered the same to another person as genuine, and has thereby committed an offence punishable under the 242d clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On Clauses 242, 243.

Secondly: That he has, knowing a coin to be counterfeit, attempted to induce another person to receive it as genuine, and has thereby committed an offence punishable under the 242d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and intending that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and knowing it to be likely that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate, &c.*]

First: That he has committed murder, and has thereby committed an offence punishable under the 300th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On Clauses 300, 301

Secondly: That he has committed manslaughter, and has thereby committed an offence punishable under the 301st clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clauses 364, 367.

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Secondly: That he has committed theft, having made preparation for causing death to a person in order to the committing of such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has committed theft, having made preparation for causing restraint to a person in order to retiring after the committing of such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On Clauses 364, 387.

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Secondly: That he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

And the same shall be followed, as nearly as may be, in charges with more heads than one, upon other clauses of the Penal Code.

CLXXII.

Amendment of charge.

It shall be competent to the Court, at any stage of a trial, to amend or alter the charge against a Defendant.

CLXXIII.

When the trial may be immediately proceeded with after amendment.

If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the Defendant in his defence, it shall be at the discretion of the Court, after making the amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

CLXXIV.

When a new trial may be ordered, or trial suspended.

If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the Defendant in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the Defendant to make his defence to the amended or altered charge; and after hearing his defence, may further adjourn the trial to admit of the appearance of any witnesses whose evidence the Court may consider to be material to the case, or whom the Defendant may wish to be summoned in his defence. If after the reading of the amended or altered charge to the Defendant no postponement is desired by the Defendant, or considered necessary by the Court, the Court may at once proceed with the trial.

CLXXV.

Defendant may recal and cross-examine witnesses for prosecution.

In all cases of amendment or alteration of a charge, the Defendant shall be allowed to recal and cross-examine any witness that may have been examined for the prosecution.

CHAPTER XIII.

Of Offences triable by the Magistrate.

Cases in which a Warrant or Complaint may issue against the Defendant.

Complaint and issuing of Process for causing the Attendance of the Accused.

CLXXVI.

Cases in which Magistrate may issue a warrant.

In all cases where a complaint shall be made before a Magistrate having jurisdiction in the case that any person has committed, or is suspected to have

committed, any offence triable by such Magistrate, and which is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such Magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the Magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint.

Summons instead of warrant.

CLXXVII.

Postponement of issue of process.

If the Magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the Magistrate to believe the charge well founded, and the offence be of the nature described in Article CLXXVI., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the Magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

CLXXVIII.

Magistrate may direct bail to be taken.

It shall be at the discretion of the Magistrate, in issuing his warrant for the arrest of any person against whom a complaint has been made, to direct that if such person be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release such person from custody. In the event of bail being given, the officer shall forward the recognizance to the Magistrate.

CLXXIX

Magistrate may dispense with personal attendance of accused.

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the Magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

CLXXX.

Arrest on warrant endorsed by a Magistrate of another district.

Where any such person as is mentioned in Article XXXVII. or Article XXXVIII. shall be apprehended out of the jurisdiction of the Magistrate granting the warrant against him, and carried before the Magistrate who endorsed such warrant, the Magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the Magistrate granting the warrant, shall take bail of such person for his appearance before the Magistrate granting the warrant, release the person from custody, and forward the recognizance to the Magistrate granting the warrant.

CLXXXI.

Proclamation for an absconding party.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a Magistrate he cannot be found, the Magistrate shall, on proof thereof, cause a written proclamation requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he has usually resided. In case the party does not appear and deliver himself up within the period fixed, it shall be lawful for the Magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual

Attachment of property.

seizure by an officer of the Magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the Magistrate shall deem proper under the circumstances of each case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Property after six months to be at the disposal of Government

Summoning, &c. of Witnesses.

CLXXXII.

Summons to a witness to attend and give evidence

The Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said Magistrate, to testify what they know concerning the complaint made against the accused party.

CLXXXIII.

If he do not obey the summons, then warrant.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the Magistrate to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid; and, if necessary, such warrant may be backed by the Magistrate of another district, in order to its being executed out of the jurisdiction of the Magistrate who shall have issued the same.

CLXXXIV.

In what cases warrant in the first instance.

If the Magistrate shall be satisfied by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

CLXXXV.

Refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the Magistrate may, by warrant under his hand and seal, commit such witness to custody for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CVII. or Article CXIV.

Examination of Parties and Evidence.

CLXXXVI.

Examination of the complainant and witness for the prosecution.

When any such case, as referred to in Article CLXXVI., is brought before a Magistrate, the Magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall prevent the Magistrate from examining the Defendant at any stage of the proceedings, as provided in Article CXCII.

CLXXXVII.

To be in the presence of the Defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the Defendant, and the Defendant shall be permitted to cross-examine them.

CLXXXVIII.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the Magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed

shall be read over to the witness, and signed by him in the presence of the Magistrate. In case the witness shall refuse to sign the deposition, the Magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Magistrate shall think fit to make. It shall be at the discretion of the Magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or Defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the Magistrate upon the objection. The Magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CLXXXIX.

It shall not be competent to the Magistrate to receive in evidence against the Defendant any written admission or confession of guilt, or any statement made by him to the darogha or other officer of police, and by him reduced into writing.

Magistrate not to receive written confession of guilt made to the police.

CXC.

Nothing contained in the last preceding article shall prevent the Magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

But may receive evidence of a police officer as to unrecorded admission of guilt.

CXCI.

It shall be at the discretion of the Magistrate, at any stage of the proceedings, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

May summon necessary witnesses at any stage of the proceedings.

CXCII.

It shall be at the discretion of the Magistrate to examine the Defendant at any stage of the proceedings, from the time of the Defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the proceedings are completed and judgment pronounced.

Examination of Defendant.

CXCIII.

If the Defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the Magistrate shall require him to give an account of the facts and circumstances in detai, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

Magistrate how to proceed in case of confession.

CXCIV.

No influence, by means of any promise or threat, shall be used to any Defendant under examination, to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

CXCV.

The examination of the Defendant, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the Defendant refuses to sign, his reason shall be stated in writing, as he gives it, at the foot of the examination; and whether the Defendant signs it or not the examination shall be attested by the signature of the Magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the Defendant's statement.

Examination of the Defendant how to be recorded.

CXCVI.

Defendant may be detained for any offence committed by him.

The Defendant, on examination, may be committed or held to bail by the Magistrate for any offence which from the evidence he may appear to have committed.

CXCVII.

Any person attending may be detained for any offence committed by him.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the Magistrate for the purpose of examination for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made.

Bail and Warrant of Commitment.

CXCVIII.

Application of previous rules.

The provisions of Articles CXLII. to CLIV. inclusive shall be applicable to cases triable by the Magistrate under the rules this section.

Adjournment.

CXCIX.

Application of previous rules.

The provisions of Article CLV. shall be applicable to cases triable by the Magistrate under the rules of this section.

Discharge of the Defendant.

CC.

When Defendant to be discharged.

When a Magistrate finds that there are not sufficient grounds for putting the Defendant on his trial on a formal charge, or for remanding him, he shall discharge him.

Charge, Plea, and Defence.

CCI.

Charge.

When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the Defendant as the Magistrate may consider necessary, have been taken, the Magistrate shall consider whether any and what offence is *primâ facie* proved against the Defendant, and if he finds that an offence is apparently proved against the Defendant which falls within the definition in a certain clause of the Penal Code, or within one or other of the definitions in several clauses of the code, he shall prepare in writing a charge against the Defendant in the manner prescribed in Chapter XII. of this Code of Procedure.

CCII.

Plea.

The charge shall then be read to the Defendant, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCIII.

Plea of "guilty."

If the Defendant plead "guilty," the Magistrate shall explain to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the Defendant comprehends the nature of the charge, and the effect of his plea. If the Defendant then adhere to his plea of "guilty," the same shall be recorded, and the Defendant convicted thereon.

CCIV.

Plea of "not guilty."

If the Defendant plead "not guilty" to the charge, he shall be called upon to enter upon his defence, and to produce his evidence, if in attendance, and shall be allowed to recal and cross-examine the witnesses for the prosecution.

CCV.

The Magistrate shall summon any witness, and examine any evidence, that may be offered in behalf of the Defendant, to answer or disprove the evidence against him, and may, for this purpose, at his discretion, adjourn the trial to such future time as may be necessary, and so from time to time. Evidence for the defence.

CCVI.

The provisions of Articles CLXXXIII., CLXXXIV., CLXXXV., and CLXXXVIII. shall be applicable to witnesses named in support of the defence. Witnesses for the defence.

CCVII.

If the Defendant is convicted, the Magistrate shall pass sentence upon him according to law. Conviction.

CCVIII.

In any trial before a Magistrate, wherein it may appear, at any stage of the proceedings, that either from the value of the property exceeding the pecuniary limit assigned to the Magistrate, or other cause, the case is one which the Magistrate is not competent to try, the Magistrate shall stop further proceedings under this Chapter, and shall proceed in accordance with the rules of Chapter XI. for conducting preliminary investigations in cases triable by the High Court or Session Court; and if the accused have been called upon to plead to a charge or charges prepared by the Magistrate, such charge or charges, and the proceedings consequent thereon, shall be held to be null and void. How the Magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

CHAPTER XIV.

Of Offences triable by the Magistrates.

Cases in which a Summons on Complaint shall issue to the Defendant.

Complaint and issuing of Process for causing the Attendance of the Accused.

CCIX.

In all cases where a complaint shall be made before a Magistrate, having jurisdiction in the case, that any person has committed or is suspected to have committed any offence other than the offences provided for in Chapter XIII. of this Code of Procedure, for which he is liable, upon a summary conviction for the same before a Magistrate, to be imprisoned or fined, or otherwise punished, it shall be lawful for such Magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before such Magistrate, to answer to the said complaint; provided that if the Magistrate shall be satisfied by evidence before him that the accused is about to abscond, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance for the arrest of the accused. Summons shall issue. When warrant may issue.

CCX.

Every such summons shall be served upon the person to whom it is so directed, by delivering the same to such person, or by leaving the same with some adult member of his family; and the proper officer shall certify the service of the said summons. Service of summons.

CCXI.

Provided that, before issuing the summons to the accused party, it shall be competent to the Magistrate to examine the complainant as to the specific facts of the case, and if upon such examination it shall appear to the Magistrate that there is no sufficient ground for summoning the accused, he may refuse the summons. When Magistrate may refuse summons.

CCXII.

If the person served with a summons as provided in Article CCX. shall not be and appear before the Magistrate at the time and place mentioned in If summons be not obeyed, warrant.

such summons, and it shall be made to appear to the Magistrate that such summons was so served in what shall be deemed by the Magistrate to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such Magistrate, if he shall think fit, upon declaration being made before him substantiating the matter of such complaint to his satisfaction, to issue his warrant to apprehend the person so summoned, and to bring him before such Magistrate to answer to the said complaint.

CCXIII.

Magistrate may dispense with personal attendance of accused.

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the Magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

Summoning, &c. of Witnesses.

CCXIV.

Summons to witness to attend and give evidence.

If it shall be made to appear to the Magistrate that any person is likely to give material evidence in behalf of the complainant or Defendant in any case which may be tried according to the rules of this Chapter, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such complaint, such Magistrate shall issue his summons to such person under his hand and seal, requiring him to appear at a time and place mentioned in the summons, before the said Magistrate, to testify what he knows concerning the matter of the said complaint.

CCXV.

Diet money for witnesses.

It shall be lawful for the Magistrate to direct that before any process is issued for the attendance of witnesses in cases under this Chapter, the person preferring the charge shall deposit in the hands of the proper officer a sufficient sum for the maintenance of the witnesses who may be summoned on his application, during their attendance at the Magistrate's Court, and the Magistrate shall regulate the amount of diet money so required, with reference to the probable period such witnesses may have to be in attendance, and in the event of the prolonged detention of witnesses, shall direct the deposit of any further sum which to the said Magistrate may seem requisite.

CCXVI.

Magistrate may summon necessary evidence.

It shall be at the discretion of the Magistrate, at any stage of the trial, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

CCXVII.

Application of previous rules.

The provisions of Articles CLXXXIII., CLXXXIV., and CLXXXV. shall be applicable to witnesses summoned according to the provisions of Articles CCXIV. and CCXVI.

Bail.

CCXVIII.

Defendant may be admitted to bail or to be at large upon personal recognizance.

If upon the day and at the place appointed the Defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the Magistrate by virtue of any warrant, it shall be at the discretion of the Magistrate to admit the Defendant to bail, or allow him to be at large upon his personal recognizance. If he cannot give bail, when required to do so, he shall be committed to custody. In cases in which the order of the Magistrate shall direct that the Defendant be admitted to bail, the provisions of Articles CXLII. to CLI. inclusive shall be applicable to cases tried according to the provisions of this Chapter.

Appearance, Examination of Parties, and Evidence.

CCXIX.

If upon the day appointed for the appearance of the Defendant, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint; unless for some reason he shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he shall think fit. Nonappearance of Complainant.

CCXX.

On the appearance of both parties for the hearing of the case, the substance of the complaint shall be stated to the defendant, and he shall be asked if he have any cause to show why he should not be convicted; and if he thereupon admit the truth of such complaint, and show no cause, or no sufficient cause, why he should not be convicted, then the Magistrate may convict him accordingly. Admission by Defendant of truth of complaint.

CCXXI.

If the Defendant do not admit the truth of the complaint, then the Magistrate shall proceed to hear the complainant, and such witnesses as he may examine in support of his complaint, and also to hear the Defendant and such witnesses as he may examine in his defence; and having heard the parties and their witnesses, shall consider the whole matter and determine the same, and shall convict the Defendant or dismiss the complaint, as the case may be. Proceeding when no such admission is made.

CCXXII.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the Magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the Magistrate. In case the witness shall refuse to sign the deposition, the Magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Magistrate shall think fit to make. It shall be at the discretion of the Magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or Defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the Magistrate upon the objection. The Magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination. How the evidence is to be recorded.

CCXXIII.

Before or during the hearing of any complaint, it shall be lawful for the Magistrate to adjourn the hearing of the same to a future day, to be then appointed and stated in the presence and hearing of the party or parties; and if on the day to which such hearing or such further hearing shall be so adjourned the Defendant shall not appear, the Magistrate may issue his warrant for the arrest of such Defendant, and if the complainant shall not appear, the Magistrate may dismiss such complaint. Adjournment.

CCXXIV.

It shall be at the discretion of the Magistrate, in the trial of any case in which a summons on complaint shall issue to the Defendant, to follow the rules of procedure prescribed in Chapter XII. for the preferring of criminal charges, and in Articles CCI. to CCVI. inclusive, for the trial of such charges. Formal charge may be prepared.

CCXXV.

If the Defendant is convicted, the Magistrate shall pass sentence upon him according to law. Conviction.

Costs.

CCXXVI.

Magistrate may award costs.

In all cases of summary conviction under this chapter, it shall be lawful for the Magistrate making the same, in his discretion, to award that the Defendant shall pay to the complainant such costs as to such Magistrate shall seem just and reasonable; and in cases where such Magistrate, instead of convicting as aforesaid, shall dismiss the complaint, it shall be lawful for him, in his discretion, in and by his order of dismissal, to award and order that the complainant shall pay to the Defendant such costs as to such Magistrate shall seem just and reasonable; and the sums so allowed for costs shall always be specified in such conviction or order of dismissal aforesaid, and shall be recoverable by distress and sale of the goods and chattels of the party, and, in default of such distress, by imprisonment, without labour, in the gaol for the confinement of debtors, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

CHAPTER XV.

Of Inquiries and Trials before the Subordinate Criminal Courts.

CCXXVII.

How cases are to be brought before Subordinate Criminal Courts.

Criminal cases shall be brought before the Subordinate Criminal Courts by reference by the Magistrate. It shall, however, be at the discretion of the Government, respect being had to the public convenience, to authorize a Subordinate Criminal Court also to receive such cases on complaint preferred directly to such Court, or on the report of a police officer.

CCXXVIII.

Cases how to be referred.

Whenever a criminal case is referred by a Magistrate to a Subordinate Criminal Court, the order of reference, if the case have been transmitted by a police officer, shall be recorded on such officer's report, and if the complaint have been preferred direct to the Magistrate, the process for causing the attendance of the accused shall be made returnable to the Court to which the case is referred, and the witnesses shall be directed by the summons to attend at such Court.

CCXXIX.

Subordinate Criminal Courts to follow the same rules of procedure as the Magistrate.

In the trial of criminal cases, whether brought before them on reference by the Magistrate, or directly by complaint preferred to themselves, or by the report of a police officer, the Subordinate Criminal Courts shall be guided by the rules prescribed for the guidance of the Magistrate in similar cases, and police officers and others shall be bound to obey all orders and processes issued in such cases by a Subordinate Criminal Court in like manner as if they had been issued by the Magistrate.

CCXXX.

Mode of proceeding in cases beyond jurisdiction.

In every case before a Subordinate Criminal Court, wherein the Court at any stage of the proceedings may be of opinion that the evidence is such as to warrant a presumption that the Defendant has been guilty of an offence calling for a more severe punishment than the Court is authorized to adjudge, it shall stop further proceedings, and if the case have been brought before it by complaint directly preferred, shall leave the complainant to apply to the Magistrate, and in all other cases shall submit its proceedings to the Magistrate, who shall either try the case himself, or, if the case have been submitted by a Subordinate Criminal Court of the second class, refer it, at his discretion, to a Subordinate Criminal Court of the first class. In either case, the Court which gives judgment in the trial shall examine the parties and the evidence, as if no proceedings had been held in any other Court.

CCXXXI.

Foregoing rule not to interfere with the power of a S.C.C. to commit for trial before the Session Court.

Provided, that nothing in the last preceding article shall be held to interfere with the exercise of power specially conferred upon a Judge of a Subordinate Criminal Court, in regard to committing or holding to bail persons charged with criminal offences to take their trial before the Session Courts.

CHAPTER XVI.

Place where Preliminary Investigations and Trials held, an open Court.

CCXXXII.

The room or place in which the Magistrate, or Judge of a Subordinate Criminal Court, shall sit to hear and try any complaint triable by himself, or to conduct the preliminary investigation into any case triable by the High Court or a Session Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them; but it shall be lawful for the Magistrate or Judge of a Subordinate Criminal Court, in his discretion, to order that during the investigation into any particular case triable by the High Court or a Session Court, no person shall have access to, or be, or remain in such room or building without the consent or permission of such Magistrate or Judge, if it appears to him that the ends of justice will be best answered by so doing.

Place where investigation made an open Court.

CHAPTER XVII.

Of Recognizance and Security to keep the Peace.

CCXXXIII.

Whenever a person charged with rioting, assault, or other violent breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, shall be convicted of such charge before any Criminal Court by which the offence may be cognizable, and the Court by which a final sentence or order in the case may be passed shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace from the person so convicted, it shall be lawful to the Court passing the final sentence or order to direct that the person so convicted be required to execute a formal engagement, in a sum proportionate to such person's condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year from the time of the prisoner's discharge, if the sentence or order be passed by a Magistrate or other officer exercising the powers of a Magistrate, or three years if the sentence or final order be passed by the High Court or by a Session Court.

Personal recognizance to keep the peace in cases of conviction.

CCXXXIV.

In cases wherein it may appear necessary to require security for keeping the peace in addition to the personal recognizance of the party, it shall also be lawful to the Court passing the final sentence or order to direct the same, and to fix the amount of the security bond to be executed by the surety or sureties, with a provision that if the same be not given the party required to find the security shall be kept in custody for any time not exceeding one year, if the order be passed by a Magistrate, or other officer exercising the powers of a Magistrate, or three years if the order be passed by the High Court or by a Session Court.

Security to keep the peace.

CCXXXV.

It shall be lawful for the magistrates, or other officers exercising the powers of a Magistrate, to take a recognizance from a party in all cases wherein it may appear just and necessary to require the same for the maintenance of the peace in their respective jurisdictions, although the party to be bound in such recognizance may not have been convicted of any specific offence.

Personal recognizance without conviction.

CCXXXVI.

In cases wherein it may appear necessary to require security for keeping the peace, in adition to the recognizance of the party, it shall be lawful for such Magistrate, or other officer exercising the powers of a Magistrate, to direct the same, although the party required to give such security may not have been convicted of any specific offence, and to fix a reasonable amount for the security bond to be executed by the surety or sureties.

Security without conviction.

CCXXXVII.

For one year.

Whenever it shall appear to the Magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, need not exceed one year, it shall be lawful for him, without reference to superior authority, to give directions accordingly, and in default of such recognizance or additional security, to commit the party to prison in the civil gaol until he shall do what has been required of him.

CCXXXVIII.

For more than one year.

Whenever it shall appear to the Magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, ought to exceed the period of one year, the Magistrate or other officer aforesaid shall record his opinion to that effect, with an order specifying the amount of recognizance and security, as well as the number of sureties which should in his judgment be required, and the period for which the recognizance and security should be required, which however shall in no case exceed three years. If the party shall not furnish the recognizances and security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Court of Session (according as the order may have been passed by the Magistrate exercising jurisdiction within the town of Agra, or by a Magistrate of a district in the Mofussil), which, after examining them and calling for any further information or evidence which it may think necessary, shall pass orders on the case confirming, modifying, or annulling the orders of the Magistrate or other officer as aforesaid, and if the orders so passed by the High Court or Session Court confirm to any extent the requisition for recognizance or securities, the High Court or Session Court shall direct the Magistrate or other officer as aforesaid to commit the party to prison in the civil gaol until he shall do what has been required of him.

CCXXXIX.

Imprisonment not to exceed period of recognizance and security.

Provided always, that no party shall be kept in prison under the provisions of the foregoing articles for a longer period than that for which the recognizance and securities have been required from him.

CCXL.

When Magistrate may release persons under requisition of security.

The Magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security to keep the peace, whether by their own orders or by those of any other person exercising the powers of a Magistrate; provided the Magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

CCXLI.

When he must report.

In cases in which a Magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security to keep the peace, by order of the High Court or of a Session Court, can be safely released without such security, the Magistrate shall make an immediate report of the case, with his opinion, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCXLII.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the peaceable behaviour of parties, may, at all times, obtain a discharge from their future responsibility, by delivering up, or causing to be delivered up, the parties for whom they may have become responsible, to the proper Magistrate. In such case it shall be competent to such parties to find new sureties.

CCXLIII.

Proceeding to compel payment of penalty of personal recognizance.

Whenever it may be proved before the Magistrate that any such recognizance of a party as aforesaid has been forfeited, he shall proceed to enforce the penalty of such recognizance in the mode prescribed for the satisfaction of decrees of the Civil Court.

CCXLIV.

Whenever it may be proved before the Magistrate that any such recognizance has been forfeited, if a security bond shall have been taken and the magistrate shall think that proceedings should be had upon such bond, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the Magistrate shall proceed to levy the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the civil gaol of the station, during a period not exceeding six months. Proceeding to compel payment of penalty by sureties.

CHAPTER XVIII.

Security for Good Behaviour.

CCXLV.

Whenever it shall appear to a Magistrate, from the evidence to general character adduced before him, that any person is by repute a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, it shall be competent to the Magistrate to require security for the good behaviour of such person for a definite period not exceeding one year. When Magistrate may require security for good behaviour for one year.

CCXLVI.

Whenever it shall appear to a Magistrate, from the evidence to general character adduced before him, that any person is by habit a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community, the Magistrate shall record his opinion to this effect, with an order specifying the amount of security which should, in his judgment be required from such person, as well as the number of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour. How to proceed in cases beyond one year.

CCXLVII.

If the person required to furnish security, as provided in the last preceding article, shall not furnish the security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Sessions Court, (according as the order may have been passed by the Magistrate exercising jurisdiction within the town of Agra, or by a Magistrate of a district in the Mofussil,) which, after examining them, and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case, either confirming, modifying, or annulling the orders of the Magistrate, as it may judge proper and equitable. Case to be laid before the High Court or Session Court.

CCXLVIII.

In all such cases, if the High Court or Session Court shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three years, in the event of his not giving the security required from him. High Court or Session Court may require security not exceeding three years.

CCXLIX.

In every instance in which security for good behaviour may be required, whether by the High Court, the Session Court, or the Magistrate, the amount of the security, the number of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated. What the order for security is to contain.

CCL.

In default of security, party to be committed to prison.

In the event of any person required to give security under the provisions of the foregoing articles failing to furnish the security so required, he shall be committed to prison until he furnish the same; provided always, that no party shall be kept in prison for a longer period than that for which the security has been required from him.

CCLI.

When Magistrate may release persons under requisition of security.

The Magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for good behaviour, whether by their own orders or by those of any other person discharging the functions of a Magistrate; provided the Magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

CCLII.

When he must report.

In cases in which a Magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security for good behaviour, by order of the High Court or of a Session Circuit, can be safely released without such security, the Magistrate shall make an immediate report of the case, with his sentiments, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCLIII.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the good behaviour of parties may at all times obtain a discharge from their future responsibility, by delivering up or causing to be delivered up the parties for whom they may have become responsible to the proper Magistrate. In such case it shall be competent to such parties to find new sureties.

CCLIV.

Proceeding to compel payment of penalty by sureties.

Whenever the Magistrate shall be of opinion, that by reason of an offence proved to have been committed by the person for whose good behaviour security has been given, proceedings should be had upon the bond executed by the surety or sureties, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the Magistrate shall proceed to levy the penalty from such surety or sureties, by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid, and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the Magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XIX.

Juries and Assessors.

CCLV.

Trials in Agra to be by jury.

The trial of all offences within the limits of the town of Agra, except offences punishable upon summary conviction, shall be by jury.

CCLVI.

Governor General in Council may extend trial by jury to other places.

The provisions of the preceding article may be extended by the Governor General in Council to such places beyond the limits of the town of Agra as he may see fit.

CCLVII.

Trial by jury, before the Session Court, of registered persons.

Criminal trials before the Session Judge, in which a British subject, or an European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor General in Council may see fit to extend this rule, registered according to such rules as the Governor General in Council shall prescribe, is the Defendant or one of the Defendants, shall be by jury, of

which at least one half shall consist, if such Defendant desire it, of persons so registered.

How the jury is to be constituted.

CCLVIII.

Criminal trials before the Session Judge, in which registered and non-registered persons are joined as Defendants, shall be by jury, and such joinder shall not be a ground of severance at such trial.

Joinder of registered and non-registered persons.

CCLIX.

In such cases, if the non-registered Defendant desire it, at least one half of the jury shall consist of non-registered persons, and if the registered Defendant also desire to be tried by a jury of which one half are registered persons, then the jury shall be composed of an even number, of which one half shall be registered, and the remaining half non-registered persons.

How the jury is to be constituted in such cases.

CCLX.

In all trials, whether before the High Court at Agra or before the Session Judge, the jury shall consist of not less than three, nor more than nine persons, and unanimity, or a majority of not less than two thirds with the concurrence of the Judge, shall be necessary for a verdict of guilty; and in default of such unanimity, or of such majority with the concurrence of the Judge, the Defendant shall be acquitted.

Number of which the jury is to consist.

Number of voices necessary to a verdict of guilty.

CCLXI.

For all classes of the community not included in the number of those to whom the mode of trial by jury has by the above provisions been extended, trials before the Session Judge shall be conducted with the aid of two or more assessors as members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of such assessors shall be given separately and discussed; and if any of the assessors or the Judge shall desire it, the opinion of the assessors shall be recorded in writing. But the decision is vested exclusively in the Judge.

Trials before the Session Court with assessors.

CCLXII.

All persons resident within the limits of the general jurisdiction of the High Court shall, according to such rules, and subject to such qualifications as shall be fixed in manner herein-after mentioned, be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly.

Who are capable of serving as jurors and assessors.

CCLXIII.

The High Court shall have power from time to time to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such jurors and assessors, and such other regulations relating thereto, as it may deem expedient and proper; provided that such rules and regulations shall before they are issued have received the sanction of the Governor General of India in Council.

High Court to make rules in regard to jurors and assessors.

CHAPTER XX.

Trials before the Court of original Criminal Jurisdiction constituted by a Judge or Judges of the High Court.

CCLXIV.

When it happens that a Judge of the High Court has sent a case for trial before the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, or that a person is appointed to officiate as a Judge of the High Court, who had previously officiated in the Court by which commitments are made to that Court, and there are before the High Court charges preferred by himself upon which trials are still to be held, it shall nevertheless be competent to him to proceed thereupon as in other cases.

A person holding the office of Judge of the High Court may try cases committed by himself.

CCLXV.

It shall be competent to the High Court to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice.

Postponement of trial.

CCLXVI.

Commencement of trial.

When the Court is ready to commence the trial, the Defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCLXVII.

Plea of guilty.

If the Defendant plead "guilty," the Court shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy itself that the Defendant comprehends the nature of the charge and the effect of his plea. If the Defendant then adhere to his plea of "guilty," the same shall be recorded, and the Defendant convicted thereon.

CCLXVIII.

Refusal to plead, or plea of "not guilty." Mode of taking evidence.

If the Defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course, and in the manner in which it has heretofore been taken in trials in the Supreme Court at Calcutta, except in so far as is otherwise provided by this Code of Procedure.

CCLXIX.

Witness refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CVII. or Article CXIV.

CCLXX.

Examination of Defendant, evidence at the trial.

The examination of the Defendant before the Magistrate shall be given in evidence at the trial.

CCLXXI.

High Court not to receive written confession of guilt made to the police.

It shall not be competent to the High Court to receive in evidence against the Defendant any written admission or confession of guilt, or other statement made by him to the darogha or other officer of police, and by him reduced into writing.

CCLXXII.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the foregoing article shall prevent the Court from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

CCLXXIII.

Court may summon necessary evidence.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case.

CCLXXIV.

Defence.

When the case for the prosecution has been brought to a close, the Defendant shall be called upon to enter upon his defence and to produce his evidence.

CCLXXV.

Witnesses for the defence.

The Defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the Magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXIV.

CCLXXVI.

Adjournment.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

CCLXXVII.

In the event of the adjournment of a trial, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial. Jury to attend at adjourned sitting.

CCLXXVIII.

The Judge shall sum up the evidence on both sides, and the jury shall afterwards deliver their finding upon the charge. Summing up and delivery of verdict.

CCLXXIX.

If the Defendant is convicted, the Court shall pass sentence upon him according to law. Conviction.

CHAPTER XXI.

Cases reserved, and Cases certified by the Advocate General.

CCLXXX.

When any person shall have been convicted of any offence before a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, the Court before which the case shall have been tried may, in its discretion, reserve any question of law which shall have arisen on the trial for the consideration of the High Court, and thereupon shall have authority to respite execution of the sentence on such conviction, or postpone the sentence until such question shall have been considered and decided, as it may think fit; and in either case the Court, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and receive sentence, or to render himself in execution, as the case may be. Judges of the High Court, in the exercise of original jurisdiction, may reserve case for the opinion of the High Court.

CCLXXXI.

When the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court has reserved a point of law for the opinion of the High Court, the Judge or Judges before whom the trial was held shall, in a case signed by such Judge or Judges, state the point or points of law which shall have been so reserved, and such case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges reserving the point or points shall if possible be one, and the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to pass such judgment and sentence as to the said Judges shall seem right, or to alter the sentence, if any, passed by the Court of original jurisdiction. Statement. Hearing.

CCLXXXII.

It shall be lawful for any party upon whom sentence of punishment has been passed by a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, to present a memorial to the Advocate General of the Bengal Presidency, alleging that there is error in the decision of such Court on a point of law, and distinctly specifying such error. If the Advocate General is of opinion that there is error as set forth in the memorial, or that a point or points of law decided by the Court of original criminal jurisdiction should be further considered, he shall certify the same under his signature on the back of the memorial, and transmit the memorial with such certificate to the Judge or Judges before whom the trial was held; otherwise he shall reject the memorial. Error in law may be certified by the Advocate General.

CCLXXXIII.

Upon the receipt of such memorial, together with the certificate of the Advocate General, the Judge or Judges before whom the trial was held shall transmit the memorial and certificate, with a statement of facts and such remarks as he or they may deem necessary, to the High Court. The case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges before whom the trial was held shall, if possible, be one; and Statement of case. Hearing.

the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said Judges shall seem right.

CHAPTER XXII.

Trials before the Session Courts.

CCLXXXIV.

Cognizance of offences by the Session Court in original jurisdiction.

Except in the cases referred to in Article CXIV., a Court of Session, as a Court of original criminal jurisdiction, shall not take cognizance of any offence, but upon a charge preferred by the Advocate General, or by a Magistrate or other officer specially empowered by the Government to act in this behalf.

CCLXXXV.

A person holding the office of Session Judge may try cases committed by himself.

When it happens that a Zillah Judge has sent a case for trial before the Court of Session, or that a person is appointed to officiate as Judge of a Court of Session, who had previously officiated in the Court by which commitments are made to that Court of Session, and there are before the Court of Session charges preferred by himself upon which trials are still to be held, he shall nevertheless proceed thereupon as in other cases.

CCLXXXVI.

Postponement of trial.

It shall be competent to a Court of Session to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice.

CCLXXXVII.

Commencement of trial.

When the Court is ready to commence the trial, the Defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCLXXXVIII.

Plea of "guilty."

If the Defendant plead "guilty," the Judge shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the Defendant comprehends the nature of the charge and the effect of his plea. If the Defendant then adhere to his plea of "guilty," the same shall be recorded, and the Defendant convicted thereon.

CCLXXXIX.

Refusal to plead, or plea of "not guilty."

If the Defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course.

CCXC.

How evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness and signed by him in the presence of the Judge. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be at the discretion of the Judge to take down or cause to be taken down any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or Defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Judge shall allow the same to be put, the question and answer shall be taken down, and the objection and the name of the person making it shall be noticed in taking down the depositions, together with the decision of the Judge upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CCXCI.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CVII. or Article CXIV. — Witness refusing to answer may be committed to custody.

CCXCII.

The examination of the Defendant before the Magistrate shall be given in evidence at the trial. — Examination of Defendant, evidence at the trial.

CCXCIII.

It shall not be competent to the Session Court to receive in evidence against the Defendant any written admission or confession of guilt, or other statement made by him to the darogha or other officer of police, and by him reduced into writing. — Session Court not to receive written confession of guilt made to the police.

CCXCIV.

Nothing contained in the foregoing article shall prevent the Court from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the Defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence. — But may receive evidence of a police officer as to unrecorded admission of guilt.

CCXCV.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case. — Court may summon necessary evidence.

CCXCVI.

When the case for the prosecution has been brought to a close, the Defendant shall be called upon to enter upon his defence, and to produce his evidence. — Defence.

CCXCVII.

The Defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the Magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXIV. — Witnesses for the defence.

CCXCVIII.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time. — Adjournment.

CCXCIX.

In the event of the adjournment of a trial, the jury or assessors, as the case may be, shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial. — Jury or assessors to attend at adjourned sitting.

CCC.

In cases tried with the aid of assessors, the Judge, before pronouncing his own opinion, shall call upon the assessors for their opinions. The opinion of each assessor shall be given separately and recorded. In cases tried by jury, the Judge shall sum up the evidence on both sides, and the jury shall then deliver their finding upon the charge. — Delivery of opinions of assessors. Of verdict of jury.

CCCI.

If the Defendant is convicted, and the case is one which the Session Judge is competent to dispose of finally, he shall proceed to pass sentence upon the Defendant according to law. — Conviction.

CCCII.

If the case is one in which, if the Defendant be convicted, it belongs to the High Court to pass sentence, the Session Judge shall record the conviction, — Reference to High Court.

and refer the case to the High Court, with a statement in writing of his opinion as to the sentence which should be passed upon the Defendant; and in cases tried by jury, the Session Judge shall also transmit with the case a report of his direction to the jury.

CCCIII.

Transmission of monthly calendar of trials by Session Judge.

The Session Judges shall transmit to the High Court monthly statements or calendars in such form as the High Court shall prescribe, of all trials held by them, exhibiting the sentence passed upon each Defendant, together with an abstract of the evidence given at the trial.

CHAPTER XXIII.

HIGH COURT,

As a Court of Reference.

CCCIV.

Court for hearing of referred trials.

A case referred by a Session Judge for the final judgment and sentence of the High Court shall be heard by a Court constituted by three Judges of the said High Court, and the sentence shall be signed by not less than two of such Judges.

CCCV.

Hearing of case referred, tried with assessors.

In cases referred for the final judgment and sentence of the High Court, which have been tried with the aid of assessors, that Court shall revise the record of trial submitted by the Court of Session, and if it approves of the conviction of the Defendant, it shall proceed to sentence him to punishment according to law.

CCCVI.

Acquittal.

If the High Court disapproves of the conviction of the Defendant absolutely, it shall pass a judgment of acquittal.

CCCVII.

Difference of opinion between High Court and Session Court as to offence proved.

If the High Court disapproves of the conviction of the Defendant, on the ground that the offence proved does not answer to the legal definition of the offence of which he is convicted, it shall annul the conviction; but it shall be competent to the Court to pass a judgment convicting the Defendant of the offence which it deems to be proved by the evidence, and to sentence him to punishment according to law.

CCCVIII.

Competence of Court to direct further inquiry, &c.

In any case referred as above to the High Court, it shall be open to the prosecutor or the Defendant to move the Court for further inquiry upon any point bearing upon the guilt or innocence of the Defendant; and it shall be competent to the Court, upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case.

CCCIX.

Hearing of case referred, tried by jury.

In cases referred for the sentence of the High Court which have been tried by jury, the Court, on reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, shall determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right.

CHAPTER XXIV.

Finding, Judgment, and Sentence.

CCCX.

Form of verdict in jury trials.

In any trial by jury, when the jury are unanimous in thinking the Defendant guilty, the verdict shall be that the Defendant is guilty of the offence specified in the charge, or of the offence specified in such a head of charge, when there

are more heads than one. When the jury are not unanimous, but two thirds or more concur in thinking the Defendant guilty, the verdict shall be that the defendant is found guilty of the offence specified in the charge, or in such a head of charge as above provided, by a majority consisting of six, seven, eight, as the case may be, of the jurors. When any number of the jurors exceeding one third concur in thinking the Defendant not guilty, the verdict shall be that the Defendant is not guilty. When the jury, or two thirds or more of the jurors, concur in thinking the Defendant guilty of an offence, but are doubtful under which of two heads of charge the offence falls, the verdict shall be that the Defendant is guilty either of the offence charged in such a head, or of the offence charged in such another head of charge.

CCCXI.

What the judgment is to specify.

When the trial in any Criminal Court is concluded, the Court, in passing judgment, if it convicts the Defendant, shall distinctly specify the offence of which, and the clause of the Penal Code under which, it convicts him; or if it be doubtful under which of two clauses the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to Clause 61.

The latter part of the two preceding articles has been framed in accordance with the provisions of the following clause of the Penal Code: "In all cases in which judgment is "given in the manner prescribed in the law of procedure that a person is guilty of an offence, "but that it is doubtful under which of certain penal provisions of this code he is punishable, "the offender shall be liable to be punished with whatever punishment is common to the "penal provisions between which the doubt lies, and if imprisonment is common to the penal "provisions between which the doubt lies, and any one of those provisions admits of simple "imprisonment, the offender may be sentenced to simple imprisonment."

CCCXII.

Acquittal.

If the Defendant, after having been called upon for his defence, is acquitted, the acquittal shall be recorded so as to have a distinct reference to the charge to which the Defendant was required to answer, in order to save him from any further prosecution upon the facts to which it related.

CCCXIII.

Form of finding and sentence.

The finding and sentence shall be recorded in the following form, or to the same effect:—

In trials by Jury:

When the Jury are unanimous:

The Jury find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* [*sentence*].

2d. The Jury find that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

When the Jury are not unanimous, but two thirds or more of the Jurors concur in thinking the Defendant guilty:—

3d. A majority of the Jurors, consisting of seven of their number, find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code. The Court concurs in such finding, and, as *Z* has, by reason of the premises, become liable to cumulative punishment under the 112th Clause of the Penal Code, the Court directs that the said *Z* be [*sentence*].

4th. A minority of the Jury, consisting of two of their number, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member,

assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code, and has by reason of the premises become liable to cumulative punishment under the 112th Clause of the Penal Code. The Court concurs in such finding, and directs that the said *Z* be discharged.

5th. When the Jury are not unanimous, but any number of the Jurors exceeding one third concur in thinking the Defendant not guilty, the form No. 2 shall be followed.

When the Jury, or two thirds or more of the Jurors, concur in thinking the Defendant guilty of an offence, but are doubtful under which of two heads of a charge the offence falls :—

6th. The Jury [*or* the majority of the Jurors consisting of of their number, *as the case may be*,] find that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code. The Court directs [*or*, the Court concurs in such finding, and directs,] that under the provisions of the above-mentioned Clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials with Assessors:

7th. The Court, concurring with the Assessors, (or one or more of the Assessors,) finds that *Z* is guilty of the offence specified in the charge; viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said *Z* be [*sentence*].

8th. The Court, differing from the Assessors, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

9th. The Court, concurring with one of the Assessors, finds that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code; and the Court directs that, under the provisions of the above-mentioned Clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials upon a formal charge, without Jury or Assessors:

10th. The Court finds that *Z* is guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code; and the Court directs that the said *Z* be [*sentence*].

11th. The Court finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

In trials in which no formal charge has been prepared:

12th. The Court finds that *Z* has committed assault, and has thereby committed an offence punishable under the 342d Clause of the Penal Code, and directs that the said *Z* be [*sentence*].

13th. The Court finds that the complaint of assault is not proved, acquits *Z*, and directs that he be discharged.

CCCXIV.

Where a person shall be convicted of any two offences which are punishable cumulatively, it shall be lawful for the Court to sentence him for each of the two offences to the penalties prescribed by the Penal Code in respect of each of the two offences, provided that the punishment to which such person is sentenced for each of the two offences is within the ordinary penal jurisdiction of the Court; and it shall not be necessary for the Court, only by reason of the cumulative punishment being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. Conviction of offences punishable cumulatively.

CCCXV.

Where a person shall be convicted of several offences at the same time, punishable under the same or different clauses of the Penal Code, it shall be lawful for the Court to sentence him to the several penalties prescribed by the code in respect of the several offences of which he shall have been so convicted, provided that the punishment to which such person is sentenced for each offence is within the ordinary penal jurisdiction of the Court, such penalties, when consisting of imprisonment, to commence the one after the expiration of the other; and it shall not be necessary for the Court, only by reason of the aggregate punishment for the several offences being in excess of the punishment which the Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. Conviction of several offences.

CCCXVI.

Where sentence shall be passed on a person already under sentence of imprisonment for another offence, it shall be lawful for the Court to award imprisonment on the subsequent conviction, to commence at the expiration of the imprisonment to which such offender shall have been previously sentenced; and if empowered to pass sentence of transportation or banishment, the Court may award such sentence on the subsequent conviction to commence immediately, or at the expiration of the imprisonment to which such person shall have been previously sentenced. Judgment on offender already imprisoned under sentence for another crime.

CCCXVII.

A party who has once been tried upon a formal charge, prepared as directed in the rules of this Code of Procedure for preparing criminal charges, shall not be liable to a renewed prosecution. Party tried upon formal charge not liable to renewed prosecution.

CCXVIII.

In cases referred by the Session Judge for the final sentence of the High Court, the proper officer of the Court shall, within three days after passing of the sentence, or sooner if practicable, transmit a copy of it, under the seal of the High Court, and attested with his official signature, to the Session Judge, who shall immediately issue a warrant to the Magistrate to cause the sentence to be carried into execution. The Magistrate, upon the receipt of the warrant, shall cause the sentence to be executed, and return the warrant to the Session Judge, with an endorsement attested by his official seal and signature, certifying the manner in which the sentence has been executed. Execution of sentence of the High Court in cases referred by the Session Judge.

CCCXIX.

In cases tried by the Court of original jurisdiction at Agra, constituted by one or more Judges of the High Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the magistrate of Agra. High Court, in original jurisdiction, to direct warrant of execution to Magistrate of Agra.

CCCXX.

In cases tried by the Session Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the Magistrate of the district in which the trial was held. Session Court to direct warrant to district Magistrate.

CCCXXI.

Upon the receipt of a warrant under either of the two last preceding articles, the Magistrate shall cause the sentence to be executed, and shall return the Execution of sentence under two foregoing articles.

warrant when the sentence has been fully executed to the Court from whence it issued, with an endorsement under his official seal and signature, certifying the manner in which the sentence has been executed.

CCCXXII.

Warrant of commitment in cases of imprisonment.

In every case of imprisonment under the sentence of the High Court, whether as a Court of reference or of original jurisdiction, of the Session Court, and of the Magistrate, the Magistrate shall issue his warrant to the gaoler, stating the offence of which the Defendant has been convicted, and the period during which he is to be imprisoned. In like manner, in every case of imprisonment under the sentence of a Subordinate Criminal Court, the Court passing the sentence shall issue its warrant to the same effect.

CHAPTER XXV.

High Court as a Court of Revision.

CCCXXIII.

Revision in cases of illegal sentence.

The High Court, in any case tried by the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, shall annul the sentence, and shall certify to the Session Court the sentence which may lawfully be passed for such offence; and thereupon the Session Court shall pass a new sentence according to law, and shall amend the record in accordance therewith.

CCCXXIV.

When the sentence is too severe.

The High Court, in any case tried by the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it, that the sentence passed upon any person convicted by the Session Court is too severe, may mitigate the sentence to such extent as to the said High Court shall seem proper, and shall certify such mitigated sentence to the Session Court, which shall thereupon amend the record in accordance therewith, and proceed to give effect to the sentence of the High Court.

CCCXXV.

When in trials with assessors the judgment is not warranted by the evidence.

The High Court, in any case tried by the Session Court, except cases tried by Jury, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the judgment pronounced on any prisoner was not warranted by the evidence, may, if it thinks fit, require the Judge of the Court in which the conviction was had, to certify under his hand all or any part of the evidence taken in the case affecting such prisoner, with any observations which the Judge may be desirous of making in explanation of the judgment; and thereupon the High Court may annul such judgment, if such judgment shall appear to it not warranted by the evidence, and shall certify its proceedings to the Court in which the conviction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, amend the record in accordance therewith.

CCCXXVI.

Revision in jury trials.

The High Court, in any case tried by jury in the Session Court, in which, upon a review of the abstract statement or calendars of prisoners punished without reference, it shall appear to it that there has been error in the decision of the Session Court on a point or points of law, or that a point or points of law should be considered by the High Court, may call for the record, together with a report of the Session Judge's direction to the jury, and upon reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, may determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right. The High Court shall certify its proceedings to the Court in which the con-

viction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and if necessary, amend the record in accordance therewith.

CCCXXVII.

In cases of sentence by Session Judge, which ought to have been referred.

The High Court, in any case tried in the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the case is one which ought to have been referred for the judgment and sentence of the High Court, may, if it think fit, annul the sentence passed by the Session Court, and require the Session Judge to refer the case, and thereupon the High Court shall pass such judgment and sentence as to the said High Court shall seem right.

CCCXXVIII.

General power of revision by the High Court.

The High Court may, whenever it thinks fit, call for the whole record of my criminal trial in any Criminal Court within its jurisdiction, and pass thereon such orders as it thinks fit, but not so as to enhance the punishment awarded, or punish any person acquitted in the Court which tried the case; provided that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from determining any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

CHAPTER XXVI.

Appeals.

CCCXXIX.

No appeal in cases of acquittal.

There shall be no appeal from a judgment of acquittal passed by any Criminal Court.

CCCXXX.

Appeal in cases of conviction.

An appeal shall lie in all cases of conviction by the Magistrates in the mofussil, and by the Judges of the Subordinate Criminal Courts, to the Session Judge; and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, and by the Magistrate of Agra in cases arising within the town of Agra, to the High Court.

CCCXXXI.

Proceeding in appeals.

Any person convicted by a judgment of any of the Criminal Courts of original jurisdiction mentioned in the last preceding article, may present a petition of appeal to the Court of appellate jurisdiction, which may call for the record of conviction, and confirm, or amend, or reverse the finding and sentence of the lower Court, but not so as to enhance the punishment awarded; provided, that if the party appealing be in gaol, he shall be at liberty to present his petition of appeal to the Magistrate in charge of the same, who shall thereupon forward it to the proper appellate authority; provided also, that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from trying any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

CCCXXXII.

Court of Appeal may direct further inquiry, &c.

In any case appealed as above, except a case tried by jury, it shall be open to the appellant to move the Appellate Court for further inquiry; and it shall be competent to the Court upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case. The Appellate Court shall at the same time direct whether the lower Court shall pass a fresh sentence in the case, or certify the result of the further inquiry and the additional evidence to the Appellate Court.

CCCXXXIII.

Court of Appeal, how to proceed in a case of conviction by an incompetent Court.

When a Magistrate or Judge of a Subordinate Criminal Court has convicted a person of an offence not triable by such Magistrate or Judge, it shall be competent to the Court of Appellate Jurisdiction to annul the conviction and sentence of the lower Court, and to direct the trial of the case by a Court of competent jurisdiction.

CCCXXXIV.

Appeals from orders in proceedings other than trials.

An appeal shall lie from all orders in proceedings other than criminal trials, passed by the Magistrates in the mofussil and by the Judges of the Subordinate Criminal Courts, to the Session Court; and by the Magistrate of Agra, in cases arising within the town of Agra, to the High Court; and it shall be competent to the Courts of Appellate Jurisdiction to pass upon such appeals such orders as they shall deem just and proper.

CCCXXXV.

Period for presenting petition of appeal.

The petition of appeal from a sentence of the Session Judge must be presented within ninety days immediately following and exclusive of the day on which sentence was passed; and from the sentence or order of any other Court within thirty days, calculated in the same manner.

CCCXXXVI.

Result when Appellate Court is equally divided.

Where the Appellate Court consists of more than one Judge, if there should be a difference of opinion among the Judges, and the Court be equally divided, the judgment of the Lower Court shall be affirmed.

CCCXXXVII.

Finality of orders in appeal.

Except as provided in Article CCCXXVIII., the sentences passed by the Appellate Court upon criminal appeals shall be final.

CCCXXXVIII.

Powers of Session Judge and Magistrate to regulate the proceedings of subordinate Courts.

It shall be at all times lawful for a Sessions Judge and for a Magistrate, or other officer exercising the powers of a Magistrate, to call for and examine the records of any Court immediately subordinate to their respective Courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate Courts; but it shall not be lawful for any other Court than the High Court to alter any sentence of any subordinate Court, except upon appeal by parties concerned duly made according to the foregoing provisions.

CCCXXXIX.

Power of Session Court to direct bail.

The Session Court shall have a discretionary power of directing that any Defendant shall be admitted to bail before a Magistrate or Subordinate Criminal Court, or that the bail required by a Magistrate or Subordinate Criminal Court be reduced; and also of directing that a party not in custody be admitted to bail on his surrendering to a warrant.

CCCXL.

Power of High Court to direct bail.

The High Court shall have the like discretionary power in regard to any Defendant, or any party, charged with an offence before any Criminal Court.

SCHEDULE A.

Explanatory Notes.—1st.—The entries in the 2d and 5th Columns of the Schedule, headed "Offence" and "Penalty," are not intended as definitions of the offences and penalties described in the several corresponding clauses of the Penal Code, or even as abstracts of those clauses, but merely as references to the subject of the clause of the Code, the Number of which is given in the 1st Column.

2d.—The Term "Bailable or not," in Column 3., is to be taken in connexion with the provisions of Articles CXLII. and CXLIII. of the Code of Criminal Procedure.

3d.—No offence is triable by a Court inferior to the Court specifically mentioned in Column 4. as competent to try such offence; but offences are triable by Courts superior to the Court so mentioned.

4th.—The entries in the last Column show when any offence entered in Column 2. admits of cumulative punishment, and the number of the clause expressly providing for such punishment. The circumstances under which cumulative punishment may be inflicted will be ascertained on reference to the clauses themselves.

CHAPTER IV.—OF ABETMENT.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
88	Previous abetment of any offence by instigation, if the offence is committed in consequence.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	The punishment of the offence - -	Cumulative, Clause 89.
90	Previous abetment of any offence punishable with imprisonment, by instigation, with actual delivery of a bribe.	Idem -	Idem - - -	Imprisonment to ¼ of the longest term for that offence, or fine as for that offence, or both.	
91	Previous abetment of any offence punishable with imprisonment, by instigation, with threat of injury.	Idem -	Idem - - -	Idem - - - - - -	Cumulative, Clause 92.
93	Previous abetment by a person present instigating another to persist in the commission of an offence punishable with rigorous imprisonment for one year and upwards.	Idem -	Idem - - -	Imprisonment of either description, i. e. rigorous or simple, to ¼ of the longest term for that offence, or fine, or both.	
94	Previous abetment by instigating the public, or more than 10 persons, to the commission of any offence.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
95	Previous abetment of an offence by conspiracy, if the offence is committed in consequence.	Idem -	Idem - - - -	See Clause 88.	
96	Previous abetment by conspiracy of any offence punishable with imprisonment, if any act or illegal omission takes place in consequence in order to the offence.	Idem -	Idem - - - -	See Clause 90.	

Chapter IV.—Of Abetment—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty	6. When admitting of cumulative Punishment.
97	Previous abetment by any act or illegal omission intended to aid the commission of an offence, if the offence is committed.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	See Clause 88.	
98	When in an attempt to commit an offence, or in the commission, or in consequence of the commission of an offence, a different offence is committed which was likely to be committed.	Bailable if both offences are bailable.	By the Court by which the graver offence is triable.	The previous abettor of the first offence liable to the punishment of the last-mentioned offence.	Cumulative, Same clause.
99	When in consequence of previous abetment an offence is committed, which would be a different offence, but for some misconception of the doer from which the abettor is free, or but for some intention, &c. of the doer unknown to the abettor.	According as the offence contemplated by the abettor is bailable or not.	By the superior Court by which either the offence committed or abetted is triable.	The abettor liable to the same punishment as if no such misconception, &c. existed.	
100	When anything is done in consequence of previous abetment which would be a certain offence, but for the youth, &c. of the doer, or for some misconception on his part from which the abettor is free.	According as the offence to which the contemplated act, if committed without such exceptional circumstances, would have amounted, is bailable or not.	By the Court by which the contemplated act when an offence is triable.	See Clause 88.	
101	A public servant concealing by any act or illegal omission a design to commit any offence which it is his duty to prevent, if that offence is committed.	See 96 -	See 96 - - -	Imprisonment of either description to ½ of the longest term of imprisonment for that offence, or fine, or both.	
102	Concealing by any act or illegal omission a design to commit any offence punishable with rigorous imprisonment for one year or upwards, if the offence is committed.	Idem -	Idem - - -	See Clause 93.	
105	Subsequent abetment by intentionally omitting to give information of an offence committed, as required by law.	Bailable -	Magistrate - -	Imprisonment of either description to 6 months, or fine, or both.	

106	Subsequent abetment of any offence punishable with rigorous imprisonment for one year or upwards, by causing marks of the commission of that offence to disappear.	Idem	By the Court by which the offence abetted is triable.	Imprisonment of either description to $\frac{1}{14}$ of the longest term for that offence, or fine, or both.	
107	Subsequent abetment of an offence punishable with imprisonment for 7 years or upwards by harbouring the offender to screen him from punishment. *Exception.*—Not to extend to harbour given by relations specified.	Idem	Magistrate	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
108	Subsequent abetment by assisting the offender to retain or dispose of property fraudulently acquired.	Idem	See 106	Imprisonment of either description to 1 year, or fine, or both.	*

CHAPTER V.—OFFENCES AGAINST THE STATE.

109	Waging or attempting to wage war, or previously abetting the waging of war against the Government by instigation, conspiracy, or aid.	Not bailable	High Court or Session Court	Death, or Transportation for life, or imprisonment of either description for life, and forfeiture of all property.	
110	Previous abetment of the last offence by concealing a design to commit it.	Idem	Idem	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
111	Assaulting, &c. the Governor General of India, or the Governor, or Deputy Governor, or a Member of Council of any Presidency, to compel or restrain the exercise of his lawful powers, or attempting such offence.	Idem	Idem	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	Cumulative, Clause 112.
113	Attempting to excite disaffection to the Government.	Bailable	Idem	Banishment for life, or for any term, from the Company's Territories, to which fine may be added, or simple imprisonment to 3 years, to which fine may be added, or fine simply.	
114	Waging war, &c. against any Asiatic power in alliance with the Government.	Not bailable	Idem	Banishment, or imprisonment of either description to 3 years, to which fine may be added, or fine simply.	
115	Making preparation within the Company's Territories to commit, or to take refuge after committing depredations on the territories of any power at peace with the Government.	Idem	Idem	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine and forfeiture of specific property.	

CHAPTER VI.—OFFENCES RELATING TO THE ARMY AND NAVY.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
116	Previously abetting the commission of Mutiny by a Soldier or Sailor of the King or of the East India Company.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
117	Previous abetment of Mutiny by such a Soldier or Sailor, when Mutiny is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment of either description for life, or a term not less than 3 years; also liable to fine.	
118	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
119	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer, if the assault is committed.	Idem - -	Idem - - - -	See Clause 116.	
120	Previous abetment of the desertion of such a Soldier or Sailor.	Bailable -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
121	Previous abetment of the desertion of such a Soldier or Sailor, if desertion is committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
122	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy.	Not bailable -	Idem - - -	See Clause 116.	
123	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy, if such desertion is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment which may extend to life; also liable to fine.	
124	Subsequent abetment by harbouring such a Soldier or Sailor who has deserted. *Exception.*—Not extended to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
125	Previous abetment of a breach of Military or Naval discipline by such a Soldier or Sailor committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
126	Any person wearing any garb or carrying any token used by a Soldier in the service of the King or of the East India Company, with the intention that it may be believed that he is such a Soldier.	Idem - -	Idem - - -	See Clause 124.	

CHAPTER VII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

129	Rioting—joining or continuing in a riotous assembly.	Bailable	Magistrate	Imprisonment of either description to 6 months, or fine, or both.	Cumulative, Clause 134.
130	Rioting by joining or continuing in a riotous assembly, knowing that such assembly has been commanded to disperse.	Idem	Magistrate	Imprisonment of either description to 2 years, or fine, or both.	Cumulative, Clause 131.
132	Rioting, being armed with any weapon	Idem	Idem	Idem.	
133	If murder be committed in a riot by one of the rioters, every other rioter shall be punished under this Clause.	Idem	High Court or Session Court	Imprisonment of either description to 5 years, or fine, or both.	
135	Intentionally joining or continuing in *any* assembly of 12 or more persons, knowing that it has been commanded to disperse.	Idem	Magistrate	Simple imprisonment to 1 month, or fine, or both.	
136	Malignantly and wantonly giving provocation, intending to cause rioting, if rioting be committed.	Idem	Idem	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 137.

CHAPTER VIII.—OF THE ABUSE OF THE POWERS OF PUBLIC SERVANTS.

138	Being or expecting to be a public servant, and accepting for himself or for another any gratification as a motive for doing or forbearing to do any official act, favoring or disfavoring any party, &c.	Bailable	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
139	Accepting any gratification as a motive for inducing by personal influence any public servant to do or forbear to do any official act, &c. &c.	Idem	High Court or Session Court	Simple imprisonment to 6 months, or fine, or both.	
140	A public servant abetting, previously or subsequently, the offence in the last Clause with reference to himself.	Idem	Idem	Simple imprisonment to 3 years, or fine, or both.	If any person, in doing anything whereby he commits an offence under any clause in this Chapter, also commits an offence under any clause con-
141	A Judge accepting a gift from a plaintiff or defendant in any proceeding in his Court.	Idem	Idem	Simple imprisonment to 2 years, or fine, or both.	
142	A Judge pronouncing a decision which he knows to be unjust.	Idem	Idem	Idem.	
143	A Judge for any purpose of favour or disfavor to any party disobeying the Law of Procedure.	Idem	Idem	Simple imprisonment to 1 year, or fine, or both.	

CHAPTER VIII.—Of the Abuse of the Powers of Public Servants—*continued.*

1. Clause.	2 Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
144	Any Officer authorized to commit to confinement, or keep in confinement, knowingly committing or keeping any person unjustly.	Bailable -	High Court or Session Court	See Clause 141.	tained in any other Chapter of the Penal Code, the punishment shall be cumulative. Clause 151.
145	A public servant disobeying the law for his guidance, intending to cause injury to any person or to save any person from legal punishment.	Idem - -	See 138 - - -	See Clause 143.	
146	A public servant charged with the preparation of any document, framing it incorrectly, intending to cause injury to any person, &c.	Idem - -	Idem - - -	See Clause 138.	
147	A public servant bound not to engage in trade engaging in trade.	Idem - -	Idem - - -	Simple imprisonment to 3 months, or fine, or both.	
148	A public servant bound not to purchase or bid for certain property purchasing or bidding for the same.	Idem - -	Idem - -	See Clause 147.	
149	A public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.	Idem - -	Idem - - -	Fine to 3 months' Salary; or to thrice the amount of legal fees received by him in one month, or, if paid in land, to ¼th of the annual value of such land.	
150	Wearing the garb, &c. of a public servant in order to pass off as such.	Idem - -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	

CHAPTER IX.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

1. Clause.	2 Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
152	Absconding to avoid being served with a summons or notice.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
153	Preventing the service or the affixing of any summons, or notices, or the removal of it when it has been affixed; or preventing a proclamation.	Idem - -	Idem - - -	Idem - - - - -	Cumulative, Clause 154.
155	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Idem - -	Idem - - -	Idem.	

156	Intentionally omitting to produce or deliver up any document, being legally bound to produce or deliver up the same.	Idem - -	Idem - - -	Idem.	
157	Intentionally omitting to give any notice, or furnish information on any subject as required by law.	Idem - -	Idem - - -	Idem.	
158	Knowingly furnishing false information to a public servant.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
159	Refusing to take an oath, &c. to state the truth -	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
160	Being on oath to state the truth, refusing to answer questions.	Idem - -	Idem - - -	Idem.	
161	Refusing to sign a statement made to a public servant when legally required to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
162	Knowingly stating to a public servant on oath as true that which is false.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
163	Giving false information to a public servant in order to cause him to use his lawful power to the loss or annoyance of any person.	Idem - -	Idem - - -	See Clause 158.	
164	Preventing or attempting to prevent any public servant empowered to enter or remain in any place, or make any search, or examine anything, or put any mark upon anything, from exercising such power, or causing annoyance to him in the exercise of it.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine of Rupees 500, or both.	Cumulative, Clause 165.
166	Resisting the taking of any property by the lawful authority of a public servant.	Idem - -	Idem - - -	See Clause 159 - - - -	Cumulative, Clause 167.
168	Obstructing a sale held under lawful authority -	Idem - -	Idem - - -	See Clause 152 - - -	Cumulative, Clause 169.
170	Bidding for property at a lawfully authorized sale on account of a person under a legal incapacity to purchase it, or bidding without intending to perform the obligations incurred thereby.	Idem - -	Idem - - -	Imprisonment of either description to 1 month, or fine, or both.	
171	Any person resisting the lawful taking into custody of himself or of any other.	Idem - -	Idem - - -	See Clause 159 - - - -	Cumulative, Clause 172.
173	Rescuing or attempting to rescue any person from lawful custody.	Idem - -	Idem - -	See Clause 59 - - - -	Cumulative, Clause 174.
175	Escaping from lawful custody, or attempting to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine, or both.	Cumulative, Clause 176.

CHAPTER IX.—Contempts of the lawful Authority of Public Servants—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
177	Harbouring a person to prevent his being taken into lawful custody. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rs. 200, or both.	
178	Harbouring a person escaped from custody - *Exception.*—As in Cl. 177.	Idem -	Idem - - -	Imprisonment of either description to 2 months, or fine to Rs. 500, or both.	
179	Insulting or interrupting a public servant in the discharge of his duty.	Idem -	Idem - - -	See Clause 164 - - - -	Cumulative, Clause 180.
181	Intentionally omitting to give assistance to a public servant as directed by law.	Idem -	Idem - - -	See Clause 177.	
182	Disobeying the local order of a public servant, if such disobedience cause danger to human life, health, or safety, or any obstruction or annoyance to persons lawfully employed, or rioting, or risk of rioting.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 183.
184	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 185.
186	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 187.

CHAPTER X.—OFFENCES AGAINST PUBLIC JUSTICE.

190	Giving or fabricating false evidence - -	Bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
191	Giving or fabricating false evidence to cause any person to be convicted of a capital offence.	Not bailable -	Idem - - -	To transportation for life or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	
192	Giving or fabricating false evidence to cause any person to be convicted of an offence punishable with imprisonment for more than 7 years.	Idem -	Idem - - - -	The punishment of that offence.	

193	Removing, concealing, &c. any property to prevent its being taken as a forfeiture, or in satisfaction of a fine under a sentence, or in execution of a decree.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
194	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Idem -	Idem - - -	Idem.	
195	In a declaration which a Court of Justice is bound to receive as evidence, knowingly stating as true that which is false touching a material point.	Idem -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
196	Fraudulently or for annoyance instituting a civil suit without just grounds.	Idem -	Idem - - -	See Clause 193.	
197	Insulting or interrupting a Court of Justice -	Idem -	Magistrate - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 198.
199	Threatening any person to induce him to refrain from instituting or defending any civil suit, or from taking any legal steps in such a suit, or from giving evidence in any judicial proceeding.	Idem -	Idem - - -	See Clause 195 - - -	Cumulative, Clause 200.
201	Escaping or attempting to escape from custody under a lawful sentence.	Not bailable -	Idem - - -	See Clause 195 - - - -	Cumulative, Clause 202.
203	Returning from transportation not for life -	Idem -	High Court or Session Court	Transportation for life, also liable to fine.	
204	Returning from transportation for a term of years, and banishment for life, under a commuted sentence.	Idem -	Idem - - -	Idem.	
205	Returning from banishment for a term - -	Idem	Idem - - -	Transportation which may extend to 7 years and banishment for life.	
206	Harbouring any person escaped from custody under sentence, or returned from transportation or banishment. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - -	Simple imprisonment to 6 months, or fine to Rupees 1,000, or both.	
207	Having accepted a conditional remission of punishment, and violating the condition.	Not bailable -	High Court or Session Court	Punishment of original sentence, or if part undergone, the residue.	

CHAPTER XI.—OFFENCES RELATING TO THE REVENUE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
209	Smuggling - - - -	Bailable -	Magistrate - -	Imprisonment of either description to 3 months, or fine to Rupees 500, added to 5 times the value of the property smuggled, or both.	The punishments provided by this Chapter are independent of any confiscation to which the property, with respect to which the offences defined in this Chapter have been committed, is liable under any law. Clause 229.
210	Receiving smuggled goods knowing them to be smuggled.	Idem -	Idem - - -	Idem.	
211	Placing a vessel in a forbidden situation - -	Idem -	Idem - - -	Fine to Rupees 1,000.	
212	Cultivating, collecting, or manufacturing any prohibited article.	Idem -	Idem - - -	Simple imprisonment to 3 months, or fine to Rupees 500, or both.	
213	Making or having in possession any implement, material, or receptacle, in order to committing any offence under the last Clause.	Idem -	Idem - - -	Idem.	
214	Selling any prohibited article - - -	Idem -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
215	Having in possession any prohibited article -	Idem -	Idem - - -	Fine to twice the value of the article.	
216	Omitting to put a mark on any article as required by law.	Idem -	Idem - - -	Fine to the value of the article.	
217	Performing any part of the process of counterfeiting a stamp from which the Government derives a revenue.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
218	Having in possession any implement, &c. for counterfeiting such stamp.	Idem -	Idem - - -	Idem.	
219	Making any implement for counterfeiting such stamp.	Idem -	Idem - - -	Idem.	
220	Selling any stamp known to be counterfeit -	Idem -	Idem - - -	Idem.	
221	Having in possession a stamp, knowing it to be a counterfeit of a Government stamp, intending it for sale.	Idem -	Idem - - -	Idem.	
222	Using a counterfeit stamp as genuine - -	Id m -	Magistrate - -	Imprisonment of either description to 6 months, or fine, or both.	
223	Effacing from a stamp a writing in order that such stamp may be used for a different writing.	Idem -	Idem - -	Imprisonment of either description to 3 months, or fine to an amount equal to Rupees 500, added to 5 times the price of such stamp, or both.	

224	Using for any writing a stamp known to have been before used for a different writing.	Idem -	Idem - - -	Idem.	
225	Establishing or maintaining an illegal post, or conveying or delivering letters, &c. by such post.	Idem -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
226	Being in charge of any letter or packet on board of a vessel, and intentionally omitting to deliver the same as required by law.	Idem -	Idem - - -	Fine.	
227	Being in charge of a Ship and refusing to receive on board any letters, &c. as legally required by a public servant.	Idem -	Idem - - -	Fine to Rupees 500.	
228	A person having a licence to cultivate, collect, manufacture, import, export, convey, sell, or have in possession any article, acting contrary to the conditions of the licence.	Idem -	Idem - - -	Fine to Rupees 200.	

CHAPTER XII.—OFFENCES RELATING TO COIN.

232	Counterfeiting Coin - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
233	Counterfeiting the King's or Company's Coin -	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 2 years, also liable to fine.	
234	Making a die for counterfeiting Coin - -	Idem -	Idem - - -	See Clause 232.	
235	Making a die for counterfeiting the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
236	Having in possession any implement or material for committing an offence under any of the four last preceding Clauses.	Idem -	Idem - - -	See Clause 232.	
237	Previously abetting the counterfeiting of the King's or Company's Coin without the Company's Territories.	Idem -	Idem - - -	See Clause 233.	
238	Importing into or exporting from the Company's Territories counterfeit Coin to be passed as genuine.	Idem -	Idem - - -	See Clause 232.	
239	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	

CHAPTER XII.—Offences relating to Coin—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
240	Having any counterfeit Coin, known to be such when it came into possession, and delivering, &c. the same to any person with the intention that it shall pass as genuine.	Not bailable -	High Court or Session Court	See Clause 232.	
241	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
242	Delivering, &c. to any person any Coin as genuine, knowing it to be counterfeit.	Idem -	Magistrate - - -	Fines to 10 times the value of the genuine Coin.	
243	Possessing counterfeit Coin, knowing it to be such when it came into possession, intending that it may pass as genuine.	Idem -	High Court or Session Court	See Clause 232.	
244	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
245	A person employed in a Mint intentionally causing by any act or omission any Coins issued therefrom to be of a weight or composition different from that fixed by law.	Idem -	High Court - -	Idem.	
246	Diminishing the weight or altering the composition of any Coin intending that it shall pass as unaltered.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 1 year, minimum 3 months, also liable to fine.	
247	The same as to the King's or Company's Coin -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 1 year, also liable to fine.	
248	Possessing any implement or material intending to employ the same for committing an offence under any of the three last preceding Clauses.	Idem -	Idem - - -	See Clause 246.	
249	Possessing Coin altered as in Clause 246, having known it to be so altered when it came into possession, and delivering, &c. the same to any person with intention that it may pass as unaltered.	Idem -	Idem - - -	Idem.	
250	The same with respect to the King's or Company's Coin.	Idem -	Idem - - - -	See Clause 247.	

251	Possessing Coin, known when it came into possession to have been dealt with as in Clause 246, intending to cause the same to be in circulation.	Idem	Idem	See Clause 246.	
252	The same with respect to the King's or Company's Coin.	Idem	Idem	See Clause 247.	

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

253	Fraudulently using a false balance	Bailable	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.	
254	Fraudulently using a false weight or measure	Idem	Idem	Idem.	
255	Having a false balance, weight or measure for fraudulent use.	Idem	Idem	Idem.	
256	Making a false balance, weight or measure for fraudulent use.	Idem	Idem	Idem.	

CHAPTER XIV.—OFFENCES AFFECTING PUBLIC HEALTH, SAFETY, AND CONVENIENCE.

257	Malignantly or wantonly doing any act known to be likely to spread the infection of a dangerous disease.	Bailable	Magistrate	Imprisonment of either description to 6 months, or fine, or both.	
258	Knowingly disobeying any rule of the Quarantine laws.	Idem	Idem	Idem.	
259	Adulterating food or drink intended for sale so as to make the same noxious.	Idem	Idem	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	
260	Selling any food or drink as wholesome knowing the same to be noxious.	Idem	Idem	Idem.	
261	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Idem	Idem	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
262	Offering for sale or issuing from a Dispensary any drug or medical preparation known to have been adulterated.	Idem	Idem	Idem.	
263	Knowingly selling or issuing from a Dispensary any drug or medical preparation as a different drug or medical preparation.	Idem	Idem	Idem.	

CHAPTER XIV.—Offences affecting Public Health, Safety, and Convenience—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
264	Causing the atmosphere in any public way to be noxious or offensive.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
265	Driving or riding on a public way so rashly or negligently as to indicate a want of due regard for human life.	Idem -	Idem - -	Imprisonment of either description to 6 months, or fine to Rupees 2,000, or both.	
266	Navigating any vessel so rashly or negligently, &c.	Idem -	Idem - - - -	Idem.	
267	Conveying for hire any person in a vessel in such a state, or so loaded, as to endanger his life.	Idem -	Idem - - -	Idem.	
268	Dealing with any poisonous substance so rashly or negligently as to indicate a want of due regard for human life.	Idem -	Idem - - - -	Idem.	
269	Dealing with fire or any combustible matter so rashly or negligently, &c.	Idem -	Idem - - -	Idem.	
270	So dealing with any explosive substance -	Idem -	Idem - - - -	Idem.	
271	So dealing with any machinery - - -	Idem -	Idem - - -	Idem.	
272	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Idem -	Idem - - - -	Idem.	
273	A person omitting to take order with any animal in his possession so as to guard against danger to human life or of grievous hurt from such animal.	Idem -	Idem - - -	Idem.	
274	Causing danger, obstruction, or annoyance in any public way or line of navigation.	Idem -	Idem - - - -	Fine to Rupees 200.	

CHAPTER XV.—OFFENCES RELATING TO RELIGION AND CASTE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
275	Destroying, damaging, or defiling a place of worship or sacred object with intention to insult the religion of any class of persons.	Bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
276	Causing a disturbance to an assembly engaged in religious worship, and assaulting or threaten ing any person engaged in such worship.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 277.

278	Disturbing a religious assembly in a place of worship.	Idem -	Idem - - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 279.
280	Trespassing in a place of sepulture, offering indignity to a human corpse, or disturbing a funeral with intention to wound the feelings or to insult the religion of any person.	Idem -	Idem - - - -	See Clause 278 - - -	Cumulative, Clause 281.
282	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Idem -	Idem - - -	Idem.	
283	Doing or threatening to do any act with intention to cause it to be believed that some person is thereby rendered an object of divine displeasure, &c. &c.	Idem -	Magistrate - -	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
284	Committing an assault with intention to cause a person to lose caste, or inducing him to do something ignorantly whereby he will incur loss of caste.	Idem -	Idem - - -	Imprisonment of either description to 6 months, fine to Rupees 2,000, or both.	
285	Intentionally causing the food of a person to be in a state in which he, according to his religion or caste, cannot use it.	Idem -	Idem - - -	Fine to Rupees 50.	
286	If the last offence is repeated after a conviction -	Idem -	Idem - - - -	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	
	CHAP. XVI.—ILLEGAL ENTRANCE INTO AND RESIDENCE IN THE TERRITORIES OF THE EAST INDIA COMPANY.				
287	A subject of the King, not a native of the Company's Territories, omitting on his arrival by Sea in those Territories to report his name, place of destination, and object of pursuit.	Bailable -	Magistrate - - -	Fine to Rupees 1,000.	
288	A subject of the King, not a native of the Company's Territories, entering the said Territories by land without legal authority.	Idem -	Idem - - -	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
289	A subject of the King, &c. entering or residing in a certain part of the said Territories without the licence required by law.	Idem -	Idem - -	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
290	Repeating the last offence after conviction -	Idem -	High Court or Session Court	Banishment for life or for any term, or simple imprisonment to 1 year, to which fine may be added.	

CHAPTER XVII.—OFFENCES RELATING TO THE PRESS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
291	Possessing a Printing Press not having made and subscribed the declaration required by law.	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine to Rupees 5,000, or both.	
292	Printing or publishing any book, &c., without the name of the Printer and Publisher and the place of printing and publishing.	Idem -	Idem - - -	Idem.	
293	Printing, &c. any Newspaper, &c. contrary to law	Idem -	Idem - - -	Idem.	

CHAPTER XVIII.—OFFENCES AFFECTING THE HUMAN BODY.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
300	Murder - - - - -	Not bailable -	High Court or Session Court	Death, or Transportation for life, or rigorous imprisonment for life, also liable to fine.	
301	Manslaughter - - - -	Idem -	Idem - - -	Imprisonment of either description to 14 years, or fine, or both.	
302	Voluntary culpable homicide by consent -	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
303	Voluntary culpable homicide in defence -	Idem -	Idem - - -	See Clause 301.	
304	Causing death by an act or illegal omission so rash or negligent as to indicate a want of due regard for human life.	Idem -	Idem - - -	Imprisonment of either description to 2 years, a fine, or both.	Additional, Clause 305.
306	Previous abetment by aid of Suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Idem -	Idem - - -	See Clause 300.	
307	Previously abetting by aid the commission of Suicide.	Idem -	Idem - - -	See Clause 302.	
308	Doing any act, &c. with such intention, &c. that if death ensued it would be murder, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Transportation for life, or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	

309	Doing any act, &c. with such intention, &c. that if death ensued it would be voluntary culpable homicide, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
311	Being a Thug - - - -	Idem -	Idem - - -	Transportation for life, or imprisonment of either description for life, also liable to fine.	
			Causing Miscarriage.		
312	A woman causing herself to miscarry, or any person causing a woman to miscarry.	Bailable -	High Court or Session Court	See Clause 309.	
313	Committing the offence in the last Clause without the woman's consent.	Not bailable -	Idem - - -	The punishment of miscarriage in excess of any punishment incurred by reason of any hurt caused to the woman.	
			Of Hurt.		
318	Causing hurt, except as in Clause 325 -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
319	Causing grievous hurt, except as in Clause 326 -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 10 years, minimum 6 months, also fine.	
320	Causing hurt in an attempt to commit murder -	Idem -	Idem - - -	See Clause 308.	
321	Causing hurt for the purpose of extortion, &c. -	Idem -	Idem - - -	Rigorous imprisonment maximum 14 years, minimum 1 year, also liable to fine.	
322	Causing grievous hurt for the purpose of extortion, &c.	Idem -	Idem - - -	See Clause 308.	
323	Causing hurt (except as in Clause 325) by a sharp instrument, or by fire, &c., or by any corrosive or explosive substance, or by any substance deleterious to inhale or swallow, or by means of any animal.	Idem -	Magistrate - - -	See Clause 309.	

CHAPTER XVIII.—Offences affecting the Human Body—*continued*: Of Hurt—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable	5. Penalty.	6. When admitting of Cumulative Punishment.
324	Causing grievous hurt (except as in Clause 326) by any of the means described in the last Clause.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
325	Causing hurt on grave and sudden provocation, not intending to hurt any other but the person who gave the provocation	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
326	Causing grievous hurt as in last Clause -	Idem -	High Court or Session Court	Imprisonment of either description to 1 year, or fine to Rupees 2,000, or both.	
327	Causing grievous hurt by an act or illegal omission so rash or negligent as to indicate a want of regard for the safety of others.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 328.
329	Any act or illegal omission intended, &c. to cause grievous hurt, the causing of which would be an offence other than that defined in Clause 326, and carrying it to a length at the time contemplated as sufficient to cause grievous hurt.	Not bailable -	Idem - -	Imprisonment of either description to half the term the offender would have been liable to, had he caused the grievous hurt intended, or fine, or both.	
	Wrongful Restraint and Confinement.				
332	Wrongfully restraining any person - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
333	Wrongfully confining any person - -	Idem -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
334	Wrongfully confining for 3 days or more -	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
335	Wrongfully confining for 10 days or more -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, in addition to 3 days for every day of such wrongful confinement, minimum 6 months in addition to 1 day for every day of such wrongful confinement, also liable to fine.	

336	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any term of imprisonment to which the offender may be liable under Clause 335, also liable to fine.	
337	Wrongful confinement for the purpose of extortion, &c.	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any imprisonment under either of the last two Clauses, also liable to fine.	
338	While keeping a person in wrongful confinement, omitting to furnish him with anything necessary to prevent danger of death or hurt.	Idem	Idem	Imprisonment of either description to 1 year, or fine. or both.	
			Assault.		
342	Assault otherwise than on grave and sudden provocation.	Bailable	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
343	Assault in attempt to commit murder	Not bailable	High Court or Session Court	See Clause 308.	
344	Assault in attempt to commit kidnapping	Idem	Idem	Imprisonment of either description, maximum half the term of imprisonment for kidnapping, minimum 6 months, also liable to fine.	
345	Assault in attempt to cause grievous hurt otherwise than on grave and sudden provocation.	Idem	Idem	Imprisonment of either description to ½d the term for grievous hurt, or fine, or both.	
346	Assault on a woman in attempt to commit rape	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
347	Assault on a woman with intent to outrage her modesty.	Bailable	Magistrate	Imprisonment of either description to 2 years, or fine, or both.	
348	Assault on a person with intent to dishonour him otherwise than on grave or sudden provocation.	Idem	Idem	Imprisonment of either description to 2 years, or fine, or both.	
349	Assault on a person in attempt to commit theft on any property he may be wearing or carrying.	Not bailable	Idem	Idem.	
350	Assault on a person in attempt to wrongfully confine him.	Bailable	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	

CHAPTER XVIII.—Offences affecting the Human Body—*continued*: Assault—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
351	Assault on a person on grave and sudden provocation given by that person.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	
352	Making show of assault except on grave and sudden provocation.	Idem -	Idem - - -	Idem.	
	Kidnapping.				
355	Kidnapping - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
356	Kidnapping intending or knowing that murder may be committed in consequence.	Idem -	Idem - - -	See Clause 308.	
357	Kidnapping intending or knowing that the consequence may be grievous hurt or rape, &c.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
358	Being in charge of a vessel and permitting a person to embark on board for a place not within the Company's Territories without a legal order or permit.	Bailable -	Magistrate - -	Simple imprisonment to 1 month for every person so embarked, or fine to Rupees 200 for every person, or both.	
	Rape.				
360	Rape - - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
	Unnatural Offences.				
361	Unnatural offences - - - -	Not bailable -	High Court or Session Court	See Clause 360.	
362	Unnatural offences without consent - -	Idem -	Idem - - -	Imprisonment of either description, maximum for life, minimum 7 years, also liable to fine.	

CHAPTER XIX.—OFFENCES AGAINST PROPERTY.

364	Theft - - - -	Not bailable -	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	Rigorous imprisonment to 3 years, or fine, or both.	
365	Theft within any building, tent, or vessel used as a human dwelling, or any building used for the custody of property, in pursuance of a conspiracy in which any person residing or employed within and any person not so residing or employed are engaged.	Idem -	Idem - - -	Rigorous imprisonment, maximum 3 years, minimum 6 months, also liable to fine.	
366	Theft on a letter or packet in possession of an Officer of the Post Office.	Idem -	Idem - - -	Idem.	
367	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Idem -	High Court or Session Court	Rigorous imprisonment, maximum 7 years, minimum 1 year, also liable to fine.	
			Extortion.		
369	Extortion - - - -	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
370	Putting or attempting to put in fear in order to extortion.	Idem -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
371	Extortion by putting a person in fear, for himself or for another, of death or grievous hurt.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	

CHAPTER XIX.—Offences against Property—*continued*: Extortion—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
372	Putting or attempting to put a person in fear, for himself or for another, of death or grievous hurt, in order to extortion.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
373	Extortion by putting a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust.	Idem -	Idem - - -	See Clause 371.	
374	Putting or attempting to put a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust in order to extortion.	Idem -	Idem - - -	See Clause 372.	
	Robbery and Dacoity.				
377	Robbery - - - -	Not bailable -	High Court or Session Court	Rigorous imprisonment, maximum 14 years, minimum 2 years, also fine.	Cumulative, Clause 382. (377–379)
378	Attempt to commit robbery - - -	Idem -	Idem - - -	Rigorous imprisonment, maximum 7 years, minimum 1 year, also fine.	
379	Dacoity - - - - -	Idem -	Idem - -	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also fine.	
380	Murder in dacoity, where 6 or more engaged in committing it.	Idem -	Idem - - -	Death, or transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also fine.	
381	Being one of 6 or more persons assembled for dacoity.	Idem -	Idem - - -	See Clause 378.	
	Criminal Misappropriation of Property not in Possession.				
384	Criminal misappropriation of property not in possession.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 2 years, or fine, or both.	

385	Criminal misappropriation of property not in possession, knowing that it was in possession of a deceased person at his death, and has not since been in the possession of any person legally entitled to it.	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
	Criminal Breach of Trust.				
387	Criminal breach of trust	Bailable	High Court or Session Court	Imprisonment of either description to 3 years, or fine, or both.	
388	Criminal breach of trust by a public servant in the Post Office Department by misappropriating letters, &c. entrusted to him.	Idem	Idem	See Clause 385.	
	Receiving Stolen Property.				
390	Fraudulently receiving stolen property knowing it to be stolen.	Not bailable	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	See Clause 387.	
391	Fraudulently receiving stolen property knowing it was obtained by dacoity.	Idem	High Court or Session Court	See Clause 379.	
	Cheating.				
394	Cheating	Bailable	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.	
395	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Idem	Magistrate	Imprisonment of either description to 2 years, or fine, or both.	
396	Cheating by personation	Idem	Idem	Idem.	
397	Attempting to cheat by personation	Idem	Idem	See Clause 394.	

CHAPTER XIX.—Offences against Property—*continued*: Cheating—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
			Fraudulent Insolvency.		
398	An Insolvent Trader fraudulently removing or concealing or delivering or transferring to any party any property to prevent the distribution of that property among his creditors.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
			Mischief.		
400	Mischief - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Fine to 10 times the wrongful loss thereby caused.	
401	Mischief, having taken precaution not to be detected.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
402	Mischief thereby causing wrongful loss to Rupees 5 or upwards.	Idem -	Idem - - - -	Idem.	
403	Mischief thereby causing wrongful loss to Rupees 100 or upwards.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
404	Mischief intending to enhance the value of any article, or to affect the event of any competition for the gain of any person.	Idem -	Idem - - - -	Idem.	
405*	Mischief with intent to insult or annoy the person to whom wrongful loss is intended.	Idem -	Idem - - -	Idem.	
406	Mischief by killing, wounding, or poisoning any animal to the value of Rupees 10.	Idem -	Idem - - - -	Imprisonment of either description to 3 years, or fine, or both.	
407	Mischief on any channel or reservoir of water with intent, &c. to cause diminution of cultivation of agricultural produce, or a failing of the supply of water required for food, drink, &c., or for carrying on any manufacture.	Idem -	Idem - - -	Idem.	
408	Mischief on any road, bridge, or navigable channel with intent, &c. to render it less safe or easy to travel.	Idem -	Idem - - - -	Idem.	

409	Mischief with intent, &c. to cause an inundation attended with loss to Rupees 100 or upwards.	Idem -	Idem - - -	Idem.	
410	Mischief on any lighthouse or buoy with intent, &c. to render the same less useful.	Idem -	Idem - - - -	Idem.	
411	Mischief on any landmark with intent, &c. to render it less useful.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
412	Mischief by fire with intent, &c. to destroy property not within a building to the value of Rupees 100 or upwards.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also liable to fine.	
413	Mischief by fire with intent, &c. to destroy any building used as a dwelling or for the custody of property.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
414	Mischief by fire with intent, &c. that buildings used as dwellings to the number of 5 may be consumed.	Idem -	Idem - - - -	Transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also liable to fine.	
415	Mischief on any decked vessel with intent, &c. to destroy it or render it unsafe.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
416	Mischief, having made preparation for causing death, hurt, or wrongful restraint, or fear of death, hurt, or wrongful restraint, while committing or attempt to commit or retiring after committing such mischief.	Idem -	Idem - - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 417.
	Criminal Trespass.				
425	Criminal Trespass - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
426	House Trespass - - - -	Not bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	Cumulative, Clause 427.
428	House Trespass in order to any offence punishable with death or transportation for life.	Idem -	High Court or Session Court	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also liable to fine.	
429	House Trespass in order to any offence punishable with imprisonment.	Idem -	The High Court or Session Court, if the offence intended is triable by those Courts exclusively; otherwise by the Magistrate.	Imprisonment of either description to 1 year, added to ⅓d of the longest term for the offence intended, or fine, or both.	

CHAPTER XIX.—Offences against Property—*continued*: Criminal Trespass—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5 Penalty.	6. When admitting of cumulative Punishment.
430	House Trespass, having made preparation for causing hurt, assault, &c.	Not bailable -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
431	Lurking house trespass or house breaking -	Idem -	Idem - - -	Idem - - - - -	Cumulative, Clause 432.
433	Lurking house trespass or house breaking in order to committing an offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 2 years, added to ½ the longest term of imprisonment for the offence intended, and not less than ½ the shortest term, also liable to fine.	
434	Lurking house trespass or house breaking, having made preparation for causing hurt or assault, &c.	Idem -	Magistrate - - -	Imprisonment of either description, maximum 3 years, minimum 3 months, also liable to fine.	
435	Lurking house trespass, &c. by night - -	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	Cumulative, Clause 436.
437	Lurking house trespass, &c. by night, in order to any offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 3 years, added to ⅔ds of the longest term of imprisonment for the offence intended and not less than the shortest time, also liable to fine.	
438	Lurking house trespass, &c. by night having made preparation for causing hurt, &c.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also fine.	
439	Criminal trespass by opening any closed receptacle for property so as to damage it, or by opening any lock.	Idem -	Magistrate - -	See Clause 430.	
440	Being entrusted by law or under a contract with any closed receptacle for property, committing criminal trespass by opening the same with a fraudulent intention by any means by which it is damaged, or by opening any lock.	Idem -	Idem - - -	See Clause 435.	

CHAPTER XX.—OFFENCES RELATING TO DOCUMENTS.

443	Committing Forgery, or using a forged document as genuine.	Not bailable	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
444	Forging or falsifying a valuable security, or using the forged document as genuine.	Idem	Idem	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
445	Forging a document, or using a forged document as genuine for the purpose of cheating.	Idem	Idem	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
446	Forging a document, or using a forged document as genuine, to harm the reputation of any party.	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
447	Making any apparatus or material for engraving, or any seal, for the purpose of committing forgery.	Idem	Idem	See Clause 444.	
448	Possessing any plate, or material, or implement for engraving, or any seal, for the purpose of forgery.	Idem	Idem	Idem.	
449	Possessing any forged document purporting to be a valuable security intending that it may be used as genuine.	Idem	Idem	Idem.	
450	Possessing anything not a document, but which has been marked by forgery, intending that it may be made a document purporting to be a valuable security and may be used as genuine.	Idem	Idem	Idem.	
451	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will.	Idem	Idem	Idem.	
452	Fraudulently destroying or defacing or secreting a valuable security.	Idem	Idem	See Clause 446.	
453	A public servant in the Post Office Department opening any letter, &c. containing any document, without legal authority.	Bailable	Magistrate	Imprisonment of either description to 2 years, or fine, or both.	
454	Any person opening a fastened letter, &c. containing a document, knowing that it does not belong to him, &c.	Idem	Idem	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CHAPTER XXI.—OFFENCES RELATING TO PROPERTY MARKS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
456	Making any counterfeit property mark, or using such as genuine.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
457	Counterfeiting any property mark affixed by the lawful authority of any public servant, or using such counterfeit as genuine to cause injury to some party.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
458	Making or using any counterfeit property mark for the purpose of cheating.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
459	Putting any property mark on any property, or using the same for the purpose of cheating.	Idem -	Idem - - -	See Clause 456.	

CHAPTER XXII.—ILLEGAL PURSUIT OF LEGAL RIGHTS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
460	Taking property from a person, not fraudulently but to satisfy a just debt, under such circumstances that if the intention were fraudulent the act would be theft or robbery.	Bailable -	High Court or Session Court	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 462.
461	Taking property as in the last Clause, and *keeping* the same *fraudulently*.	Idem -	Idem - - -	The punishment to which the offender would have been liable had the taking been fraudulent.	

CHAPTER XXIII.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
463	Being bound by contract to convey or conduct any person or property from one place to another, and illegally omitting to do so.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
464	A Seaman bound to serve in a merchant vessel leaving it, or absenting himself from it, or disobeying the order of any officer thereof.	Idem -	Magistrate - -	Imprisonment of either description to 3 months, or fine to Rupees 100, or both.	
465	Being bound to attend on or supply the want of a person who is helpless from youth, unsoundness of mind, or disease, and illegally omitting to do so.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CH APTER XXIV.—OFFENCES RELATING TO MARRIAGE.

466	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also fine.	
467	A woman committing the same offence with a man.	Bailable -	Idem - - -	Simple imprisonment to 1 year, or fine, or both.	
468	A person with fraudulent intention going through the ceremony of being married knowing that he is not thereby lawfully married.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	

CHAPTER XXV.—DEFAMATION.

479	Defamation - - - -	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine, or both.	
480	Being the possessor of machinery by which defamatory matter has been printed or engraved at the time the printing or engraving was done.	Idem -	Idem - - -	Idem.	
481	Being the first seller of the printed or engraved substance by which defamation is committed.	Idem -	Idem - - -	Idem.	

CHAPTER XXVI.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

483	Criminal intimidation - - -	Bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
484	Criminal intimidation, having taken precaution to conceal whence the threat comes.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
485	Uttering any word, or making any sound or gesture, or exhibiting any object, to insult any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
496	Uttering any word, &c. to insult the modesty of any woman.	Idem -	Magistrate - -	See Clause 483.	
487	Uttering any word, &c. malignantly and wantonly to annoy any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
488	Appearing in a public place, &c. in a state of intoxication, and causing annoyance to any person.	Idem -	Idem - - -	Simple imprisonment to 24 hours, or fine to Rupees 10, or both.	

We humbly submit this our Third Report to Your Majesty's Royal Consideration.

JOHN ROMILLY. (L.S.)

*

EDWARD RYAN. (L.S.)

C. H. CAMERON. (L.S.)

† JOHN M. MACLEOD. (L.S.)

T. F. ELLIS. (L.S.)

ROBERT LOWE. (L.S.)

Dated the 20th day of May 1856.

* See Letter from the Right Honourable the Lord Chief Justice of the Common Pleas, appended to this Report.

† See Minute by Mr. Macleod, appended to this Report.

LETTER from the Right Honourable Sir JOHN JERVIS, Lord Chief Justice of the Common Pleas.

47, Eaton Square,
22 May 1856.

My dear Sir,

I DECLINE to sign the Third and Fourth Reports of the Indian Law Commissioners. I consented to act as a Commissioner upon the express understanding that we were to endeavour to frame a Code of Procedure for all India, and with this understanding applied myself diligently to the subject, and, with the aid of the other Members of the Commission, succeeded in framing a Code which I believe is well calculated to meet the exigencies of the case, and which is certainly infinitely better than any that has been proposed by the authorities in India. If I had supposed that the Commission would be used to postpone legislation, and that the subject would ultimately be shelved by a reference to the Indian Government, I should not have consented to act; and considering that a slight has been cast upon the Commissioners by the course which has been taken, I decline to take any further part in the proceedings of the Commission.

I am yours, faithfully,
JOHN JERVIS.

N. B. Baillie, Esq.
Secretary, &c.

MINUTE BY MR. MACLEOD.

I AM under the necessity of dissenting from the recommendation of the majority of the Commissioners, that the Judges to be appointed by the Governor-General in Council to the bench of the proposed High Court of the North-western Provinces shall be selected from the five stated classes of persons. My reasons are the same which, in a Minute appended to our First Report, I stated for objecting to the scheme of the majority for the constitution of a High Court at Calcutta.

I dissent also now, as I did in respect of the High Court proposed to be established at Calcutta, from the recommendation to enact a rule empowering the Chief Justice to determine from time to time "what and how many Judges " of the Court, whether with or without the Chief Justice, shall from time " to time constitute Courts of Appeal, and what and how many Judges, whether " with or without the Chief Justice, shall constitute Courts of Original Juris- " diction." If it should be deemed fit, instead of giving this great power entirely to the Chief Justice, to take the course which I ventured to suggest, of giving it in the first instance to the collective body of the Judges, and ultimately to the Government, it may be advisable to empower the Lieutenant-Governor of the North-western Provinces to exercise this function of Government, subject to the control and direction of the Governor-General in Council.

There is one part of our scheme of lower Criminal Judicatories which on mature consideration appears to me so objectionable that I feel it my duty to dissent from it now, although I did not do so when I signed our First Report. I allude to the proposed rules determining who shall be Judges of the proposed two classes of Subordinate Criminal Courts.

These rules are:—"First Assistants to the Magistrate and Principal " Sudder Ameens shall be Judges of Subordinate Criminal Courts of the " First Class. Second Assistants to the Magistrates and Moonsiffs shall be " Judges of the Subordinate Criminal Courts of the Second Class."

I think that it would be much better to make the Principal Sudder Ameens and the Moonsiffs respectively the only Judges of the two classes of Criminal Courts under the Courts of the Magistrate Those Courts might then be better designated as the Criminal Court of the Principal Sudder Ameen and the Criminal Court of the Moonsiff. The Assistants to the Magistrates, I think, ought not to be by law constituted Judges of any Courts separate from the Court of the Magistrate. Whatever powers of Criminal Judicature they are employed to exercise they should exercise as Assistants to the Magistrate; and it should rest with the Government, or with the Magistrate if the Government delegate the duty to him, to determine from time to time, with respect to every Assistant, how much of the powers of the Magistrate he shall be authorized to exercise.

JOHN M. MACLEOD.

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FOURTH REPORT

OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO CONSIDER THE REFORM

OF THE

JUDICIAL ESTABLISHMENTS, JUDICIAL PROCEDURE, AND LAWS

OF

INDIA,

&c.

Presented to both Houses of Parliament by Command of Her Majesty.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1856.

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COMMISSION.

(L.S.) *VICTORIA* R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John M'Pherson Macleod, Esquire, John Abraham Francis Hawkins, Esquire, Thomas Flower Ellis, Esquire, and Robert Lowe, Esquire, Barrister-at-Law, Greeting:

Whereas by an Act passed in the Sixteenth and Seventeenth Years of Our Reign, reciting "That whereas by an Act of the Third and Fourth Years "of King William the Fourth it was provided that Commissioners to be "appointed thereunder, and to be styled the Indian Law Commissioners, "should inquire into the Jurisdiction, Powers, and Rules of the existing Courts "of Justice and Police Establishments in the Territories in the Possession and "under the Government of the East India Company, and all existing Forms "of Judicial Procedure, and into the Nature and Operation of all Laws, "whether civil or criminal, written or customary, prevailing and in force in any "Part of the said Territories, and should from Time to Time make Reports, "in which they should fully set forth the Result of their Inquiries, and should "from Time to Time suggest such Alterations as might, in their Opinion, be "beneficially made in the said Courts of Justice and Police Establishments, "Forms of Judicial Procedure and Laws, due Regard being had to the Dis-"tinction of Castes, Difference of Religion, and the Manners and Opinions "prevailing among different Races and in different Parts of the said Territories;" and reciting, "That whereas the Indian Law Commissioners from Time to "Time appointed under the said Act have, in a Series of Reports, recommended "extensive Alterations in the Judicial Establishments, Judicial Procedure, and "Laws established and in force in India, and have set forth in detail the "Provisions which they have proposed to be established by Law for giving "effect to certain of their Recommendations, and such Reports have been "transmitted from Time to Time to the said Court of Directors; but on the "greater Part of such Reports and Recommendations no final Decision has "been had;" it is among other things enacted, that it shall be lawful for Her Majesty at any Time after the passing of the Act, by Commission under the Royal Sign Manual, to appoint such and so many Persons in England as to Her Majesty may seem fit to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them.

Now know ye, therefore, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John M'Pherson Macleod, John Abraham Francis Hawkins, Thomas Flower Ellis, and Robert Lowe, or any Three or more of you, to make a diligent and full Inquiry into and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. **And** We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons, as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company. **And** Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved Frederick Millett, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Twenty-ninth Day of November 1853, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,
(Signed) PALMERSTON.

COMMISSION.

L. S. *VICTORIA* R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John Macpherson Macleod, Esquire, Thomas Flower Ellis, Esquire, Robert Lowe, Esquire, Barrister-at-Law, and Frederic Millett, Esquire, Greeting:

reas We did, by Warrant under Our Royal Sign Manual bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, appoint you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, and Robert Lowe, together with Our trusty and well-beloved John Abraham Francis Hawkins, to be Our Commissioners to examine and consider the Recommendations of the Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as might by or with the Sanction of the Commissioners for the Affairs of India be referred to you for Consideration.

Now know ye, that We have revoked and determined, and do by these Presents revoke and determine the said Warrant bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, and every Matter and Thing therein contained. **And** We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, Robert Lowe, and Frederic Millett, or any Three or more of you, to make a diligent and full Inquiry into, and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. **And** We do by these Presents give and grant unto you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company.

And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We kave made choice of Our trusty and well-beloved John Abraham Francis Hawkins, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Seventeenth Day of March 1854, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,

(Signed) PALMERSTON.

REPORT.

We, Your Majesty's Commissioners appointed to examine and consider the recommendations of the Indian Law Commissioners who were employed in India, and the enactments proposed by them for the reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other matters in relation to the reform of the said Judicial Establishments, Judicial Procedure, and Laws, as might by or with the sanction of the Commissioners for the Affairs of India, be referred to us, have prepared and submitted to Your Majesty in our First Report a plan for the amalgamation of the Supreme and Sudder Courts at Calcutta, as well as a simple and uniform Code of Civil and Criminal Procedure applicable both to the High Court so formed and to all inferior Courts within the limits of its jurisdiction.

In the remarks we then made introductory to the plan which we recommended for the amalgamation of the Supreme and Sudder Courts, we intimated that the extension of the measure to the other Presidencies of India would be comparatively an easy task.

In our Second Report we adverted to the wants of India in respect of substantive Civil Law, and we submitted our views as to the best means of supplying those wants.

Our Third Report comprised the plan we propose for the North-western Provinces of the Presidency of Bengal, in order to bring them under a system of judicature and procedure uniform, as far as the difference of circumstances will permit, with the system recommended by us for the Lower Provinces of the same Presidency.

We have received instructions from the Commissioners for the Affairs of India, directing us to apply ourselves to the preparation of a Report for Madras and Bombay similar to that which we have already submitted for Bengal, with such modifications as the difference in the existing systems of the Courts of those Presidencies may render necessary. As the measures we recommend for Madras are in all respects the same as those we recommend for Bombay, we consider it unnecessary to submit separate Reports for those Presidencies; and accordingly we now complete our Reports in regard to Judicatories, Jurisdiction, and Procedure, for the several Presidencies of India.

The same majority of the Commissioners which agreed in recommending that the High Court at Calcutta should be constituted in the manner proposed in our First Report think that the High Courts to be established at Madras and Bombay should also be constituted in that manner, except only as regards the number of Judges.

It is recommended by that majority that the High Courts at Madras and Bombay shall never consist of less than five members in each, of whom two shall be appointed by the Crown, and the rest by the Governor in Council of the Presidency; and that the Judges shall be selected from the same classes as in the case of the High Court of Calcutta.

The Civil Courts of the East India Company in the Presidency of Madras, under the Sudder Court, are those of the Zillah Judge, the Assistant Judge, the Subordinate Judge, the Principal Sudder Ameen, the Sudder Ameen, the District Moonsiff, the Village Moonsiff, and the District and Village Punchayets. The powers exercised by these several tribunals are to be found in the outlines of the constitution and procedure of the existing Courts given in Appendix B, No. 5, to our First Report, pp. 240–242. The Zillah Judge has primary jurisdiction without pecuniary limitation, the Subordinate Judge and Principal Sudder Ameen have jurisdiction to the extent of 10,000 rupees, the Sudder Ameen to the extent of 2,500 rupees, the District Moonsiff to the extent of 1,000 rupees, and the Village Moonsiff to the extent of ten rupees. The District and Village Punchayets are Courts of arbitration, summoned

respectively by the District and Village Moonsiffs for the disposal of cases which may be referred to them with consent of parties.

The Assistant Judge is an officer whom the Governor in Council is authorized by an Act (No. VII.) passed in the year 1843 by the Council of India to appoint to any Zillah Court. His duty is limited to the hearing of such appeals as may be referred to him by the Zillah Judge. The power of appointing such a Judge has been very sparingly exercised by the Madras Government, there appearing from a register of 1855 to be only one person then holding such appointment in the entire Presidency. As the Assistant Judge is appointed merely for a temporary purpose, that of reducing a heavy file of appeal cases, we have not included him in our general system of Judicatories; but we are not aware of any reason why the power of occasionally appointing such an officer should be taken from the Madras Government.

The Zillah, Assistant, and Subordinate Judges are members of the Covenanted Service, the Judges of the other grades are members of the Uncovenanted Service.

The Law Commissioners employed in India, in a Report submitted by them to the Government of India, dated 17th May 1843, recommended that the Civil Jurisdiction of the Principal Sudder Ameen in Madras should be free from any pecuniary limitation as in Bengal and Bombay. We see no reason for putting the Principal Sudder Ameen in Madras upon a footing different from that on which officers of the same class are placed in the other Presidencies, and are of opinion that the recommendation should be adopted.

The Subordinate Judge exercises the same civil jurisdiction as the Principal Sudder Ameen. In some districts there are Subordinate Judges; in others Principal Sudder Ameens; but officers of the two classes are not employed in the same district. As already stated, we propose to raise the primary jurisdiction of the Principal Sudder Ameen, and to place it on a level with that of the Zillah Judge. The office of Subordinate Judge we propose to abolish, and to appoint Principal Sudder Ameens where Subordinate Judges now exist. We suggest, however, that before there is any legislation on this point, the proposal we have made be particularly referred to the Government of the Madras Presidency, and its sentiments on it ascertained. Should it be deemed expedient to continue the class of officers designated Subordinate Judges, a very slight alteration will render applicable to their Courts the rules in our code relating to jurisdiction and procedure which are applicable to the Courts of the Principal Sudder Ameens.

We concur also in the recommendation made by the Law Commissioners employed in India, in the Report to which we have already adverted, that the office of Sudder Ameen at Madras should be abolished. From a statement before us it appears that, in the year 1850, the large number of 11,924 cases was disposed of by the Sudder Ameens, but of these no less than 11,757 were within the jurisdiction of the District Moonsiff, leaving only 167 cases between the highest point of the jurisdiction of the District Moonsiff and that of the Sudder Ameen, that is to say, between 1,000 and 2,500 rupees. The office seems to be unnecessary under existing circumstances, and will be more so in the event of the adoption of the recommendation we are about to make with regard to the District Moonsiff.

The District Moonsiffs (so called from there being another class of Moonsiffs in the Madras Presidency) occupy much the same position in Madras as the Moonsiffs do in Bengal and Bombay, though in all the Presidencies the Judges of this class have different powers in respect of pecuniary jurisdiction. We recommend that the jurisdiction of the District Moonsiffs at Madras (whom for purposes of convenience we have designated Moonsiffs in our Code of Procedure) should be raised to 2,500 rupees, the extent which we have recommended with respect to officers of the same class in Bengal.

The Village Moonsiff, as already stated, has jurisdiction in suits for money or other personal property, the amount of which does not exceed ten rupees. His decisions are not subject to any appeal, but may be annulled by the Zillah Judge on proof of a charge of corruption or partiality preferred within a limited period. The Village Moonsiffs settle a great many matters of petty litigation, the number of their registered decisions in the year 1850 appearing to have been near eleven thousand. The Punchayets are rather institutions for effecting arbitration than judicial tribunals, for they are held

only on the application of both parties in a suit. From the information before us it appears that the number of disputes settled by them is quite insignificant, and has always been small since these institutions were first made the subject of legislation by the Madras Government in the year 1816. We think it not improbable that the countenance given to Punchayets by the Government in enacting the regulations of 1816 has had good effects, of which no trace is to be found in returns of regularly registered decisions. Trifling as is the number to which those registered decisions seem to have dwindled, we see no reason why the Punchayet regulations should not be allowed to remain in force until the local government shall, after due inquiry and consultation, have arrived at the conclusion that they ought to be repealed. Without the least clashing with our scheme of judicatories, the regulations respecting Village Moonsiffs, as well as those respecting both District and Village Punchayets, can be left as they are. A very slight alteration in the original wording of some of our rules will guard that scheme from being construed to be incompatible with the existence of other judicatories besides those contained in it.

On the criminal side, the Session Judge had the same power as the Session Judge in Bengal. The Subordinate Judge and Principal Sudder Ameen exercise powers of punishment to the extent of two years imprisonment, which are nearly the same as those of the magistrate in Bengal; while the magistrate in the Madras Presidency can in no case pass sentence of imprisonment exceeding six months, with corporal punishment in some cases, and in other cases with a fine not exceeding 200 rupees, commutable, if not paid, to a further period of imprisonment not exceeding six months. We propose to give to the magistrate and the Principal Sudder Ameen in Madras the same powers as are proposed to be conferred respectively upon officers of those classes in the Bengal Presidency.

We observe that, by a recent Act of the Indian Legislature (No. XII. of 1854), the Governor in Council of Madras is authorized to empower one or more of the District Moonsiffs in any zillah of the Presidency to hear and determine complaints or prosecutions for certain petty offences, and to inflict upon the offenders the punishments which magistrates are authorized to inflict for the same offences. Our scheme provides for vesting all District Moonsiffs with jurisdiction in criminal cases.

There is, in the Presidency of Madras, a class of officers of the regular Civil Service, designated as "Sub-Collectors and Joint Magistrates." We have not thought it necessary to make special mention of these officers in our scheme of Criminal Judicatories. We, however, think it right to state here, that in their capacity of Joint Magistrate we regard them as Magistrates; and that we contemplate their being invested with the same powers of trying and punishing offences as the Principal Magistrates.

In the Presidency of Madras, the Tahsildars (very important officers of revenue and police), the heads of villages, and in certain instances landholders, are invested with power to punish certain petty offences. This, in our opinion, is very objectionable even now, as the power thus conferred is very liable to abuse, and will be needless when authority to punish petty offences shall have been given generally to the District Moonsiffs.

In the districts of the Presidency of Bombay, to which the general systems of Courts and Procedure of the Presidency have been extended, there are various classes of officers under the Sudder Court exercising civil jurisdiction, as detailed in Appendix B of our First Report, page 252. The ordinary Courts, however, for the administration of civil justice in each zillah, are those of the Zillah Judge, the Principal Sudder Ameen, the Sudder Ameen, and Moonsiff; the two former exercising jurisdiction without pecuniary limitation, the Sudder Ameen to the extent of 10,000 rupees, and the Moonsiff to the extent of 5,000 rupees.

We find, on referring to the statements from Bombay for the year 1851, that there, as well as at Madras, the Sudder Ameens are chiefly employed in trying cases within the jurisdiction of the Moonsiffs, and which therefore ought to be disposed of by them. We recommend that the office of Sudder Ameen be abolished at Bombay as at the other Presidencies.

The Moonsiffs in Bombay exercise a much higher pecuniary jurisdiction than do the officers of the same class in Bengal and Madras. The number of suits coming before them above the value of 2,500 rupees is very small,

and we recommend that they be placed upon the same footing as the Moonsiffs at the other Presidencies.

Besides the Courts above enumerated, there are in Bombay those of the Joint Judge and Assistant Judge. The Joint Judge is appointed whenever the state of business in any zillah may require the assistance of such an officer, and is vested with coextensive powers and a concurrent jurisdiction with the Zillah Judge. He is in fact a second Zillah Judge, and the rules of our Procedure applicable to the Zillah Judge will be equally applicable to the Joint Judge.

The Assistant Judges are of two classes,—senior and junior. The former appear to be chiefly employed in hearing appeals, which under the system proposed by us will be carried to the High Court or to the Zillah Judge, and the latter in trying original cases, which under the same system will be tried by the Moonsiffs. We suggest that the opinion of the Government of Bombay be taken as to the necessity of retaining the office of Assistant Judge.

The scheme of Civil Courts which we have prepared does not contain any provision with respect to the revenue officers who exercise civil jurisdiction in certain matters; or to the agents and their assistants employed in certain of the territories under the Government of Bombay. The collectors of revenue and the agents, in regard to their powers as Civil Judges, occupy respectively much the same position in that Presidency as the collectors in the districts of Bengal and the officers employed in the tracts of country denominated the Non-regulation Provinces occupy in the Presidency of Bengal. Our Code of Procedure is intended to apply primarily to the High Courts, and to the Courts of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs, and we believe it will be found to be equally applicable to the Courts of the agents and assistant agents.

The judicial powers of the criminal authorities of the Bombay Presidency will be found at pages 259 and 260 of our First Report. The Judges of the Sudder Foujdarry Adawlut have concurrent jurisdiction with the Session Judges for the trial of all serious offences, but this jurisdiction is rarely exercised. The Session Judge has authority to try all offences committed within his jurisdiction, and to adjudge punishment to the full extent authorized by the regulations for each offence. The Assistant Session Judge may inflict punishment to the extent of two years, and the magistrate, joint magistrate, and assistant magistrate to the extent of one year's imprisonment; but all sentences for imprisonment above three months passed by the assistant magistrate must be referred to the magistrate for confirmation.

The Native Judges in the Presidency of Bombay are not allowed to exercise criminal jurisdiction in any case. The subject of vesting them with such jurisdiction has been repeatedly considered, and in the Report to which we have already adverted, the Law Commissioners employed in India express it as their opinion that "it is expedient to employ the Principal Sudder "Ameens in the administration of criminal justice. Entrusted as they are, "and have been for a long time, with power to adjudicate in matters of pro-"perty without any limitation, we see no reason to hesitate as to investing "them with penal authority." The same Commissioners recommended that the Moonsiffs in the Bengal Presidency should be invested with criminal jurisdiction, and did not extend the recommendation so as to embrace the Moonsiffs of Madras and Bombay, merely because in those Presidencies the heads of the district police and the heads of villages have a certain jurisdiction in petty cases. In these views of the Commissioners we concur. We have already stated in the case of Madras that in our opinion the exercise of criminal authority by heads of district police and of villages is very liable to abuse. The remark applies of course with equal force to the same classes of persons in Bombay. We recommend that this power be taken away, and that the native judicial officers in the Presidency of Bombay be vested with criminal jurisdiction to the same extent as we propose in regard to the officers of corresponding classes in the Presidencies of Bengal and Madras.

In Bombay, as in Madras, the Revenue and Police functions are combined in the same persons.

We think that the Criminal Courts in Bombay may be placed in every respect upon the same footing as the like Courts in Bengal and Madras. If this measure be carried into effect, the enhanced jurisdiction of the magis-

trates of the Town of Bombay will render unnecessary the continuance of the Court of Quarter Sessions, a tribunal which has long ceased to exist for any practical purpose in the other Presidency towns.

Our Code of Criminal Procedure will be applicable to every Court which shall be required to administer the law of the Penal Code prepared by the Law Commissioners in India.

For our views on various points, as well as for further information in regard to the existing systems of judicature and procedure in the Presidencies of Madras and Bombay, we refer to the notes and appendices of our First Report,* which we consider it unnecessary to add to our present Report.

High Court.

I.

There shall be one High Court of Judicature at Madras [*Bombay*]. Institution of the High Court.

II.

Constitution of the High Court.

Such Court shall consist of not less than five Judges, of whom two shall be appointed by the Crown, and the remainder by the Governor in Council; and one of such Judges shall be appointed Chief Justice by the Crown.

The Judges to be appointed by the Crown shall be selected from barristers of England and Ireland and from members of the Faculty of Advocates in Scotland, of not less than five years standing.

The Judges to be appointed by the Governor in Council shall be selected from,—

1st. Members of the Covenanted Civil Service of ten years standing; or,

2d. Barristers of England and Ireland, and members of the Faculty of Advocates in Scotland, who shall have been admitted as barristers and advocates of the Supreme Court or of the High Court in India for a period of not less than five years; whether practising at the bar, or being officers of the Court, or holding office under the Government; or,

3d. Persons who have been in the uncovenanted Judicial Service of the Government for a period of ten years; or,

4th. Persons who have been vakeels for a period of ten years; or,

5th. Persons who shall have acted in the two last-mentioned capacities for periods amounting together to not less than ten years.

III.

Vacancies how to be filled up.

Every vacancy happening from time to time in the office of any judge who shall have been appointed by the Crown shall be filled up by the Crown, and every vacancy in the office of any judge appointed by the Governor in Council shall be filled up by the Governor in Council.

IV.

Judges to hold office during pleasure of the Crown. Governor in Council may suspend.

The judges of the High Court shall hold their offices during the pleasure of the Crown. It shall, however, be competent to the Governor in Council to direct the suspension of any judge of the High Court until the pleasure of the Crown be known.

V.

Declaration on entering upon office.

Every judge of the High Court, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:—

"I, *A.B.*, appointed a judge of the High Court at Madras [*Bombay*], do "solemnly declare that I will faithfully perform the duties of my office "to the best of my ability, knowledge, and judgment."

VI.

Seal.

The High Court shall use a seal such as shall be prescribed by the Governor in Council.

VII.

Ministerial officers.

The High Court shall prepare and submit for the approval of the Governor in Council a statement of such establishment of ministerial officers as may be

necessary for the due execution of all the powers and authorities committed to it, exhibiting in detail the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such further particulars as the Governor in Council may require. When such statement has been approved by the Governor in Council, the High Court shall proceed to make the appointments to the several offices.

VIII.

Powers of the High Court in making rules of practice, and framing forms, &c. for the High Court.

The High Court shall have power to make all the general rules for the due exercise of the civil and criminal jurisdiction vested in that Court, and also to frame forms for every proceeding in the said Court for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form, and the rules so made, and the forms so framed, shall be used and observed in the said Court; provided, that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are carried into effect, have received the sanction of the Governor in Council.

IX.

In admitting advocates, vakeels, and attorneys.

The High Court shall be empowered to approve, admit, and enrol such and so many advocates as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and plead for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many vakeels as to the said High Court shall seem meet, who shall be and are hereby authorized to appear, plead, and act for the suitors of the said High Court.

The High Court shall be empowered to approve, admit, and enrol such and so many attorneys-at-law as to the said High Court shall seem meet, who shall be and are hereby authorized to appear and act for the suitors of the said High Court.

X.

In making rules for the qualification, &c. of advocates, vakeels, and attorneys.

The High Court shall have power to make rules for the qualification and admission of proper persons to be advocates, vakeels, or attorneys-at-law of the said High Court, and shall be empowered to remove, on reasonable cause, the said advocates, vakeels, or attorneys-at-law; and no person or persons whatsoever but such advocates, vakeels, or attorneys-at-law shall be allowed to appear for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such advocates or vakeels shall be allowed to plead for or on behalf of any suitor in the said High Court; and no person or persons whatsoever but such vakeels or attorneys-at-law shall be allowed to act in any other respect than as herein-before mentioned, for any suitor in the said High Court, except that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-suitor.

Civil Jurisdiction.

XI.

Appellate jurisdiction.

The High Court shall have all the appellate jurisdiction now exercised by the Sudder Adawlut of Madras [*Sudder Dewanny Adawlut of Bombay*], and a new appellate jurisdiction from the judges of the High Court exercising original jurisdiction as herein-after provided.

XII.

High Court to superintend all Civil Courts.

The High Court shall have superintendence over all the Courts of civil judicature subject to its appellate jurisdiction, with power to call for returns, and to direct the transfer of any civil suit or appeal from any Court to any other Court of equal or superior jurisdiction.

XIII.

Powers of the High Court in making rules of practice, and

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the subordinate Civil Courts, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books,

entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Courts; provided that such rules and forms be not inconsistent with the provisions of any law in force, and shall, before they are issued, have received the sanction of the Governor in Council. Framing forms, &c. for the Subordinate Civil Courts.

XIV.

The High Court shall have original civil jurisdiction locally co-extensive with that of the present Small Cause Court; provided that it shall be in the power of the Governor in Council, from time to time, to extend the local limits of such jurisdiction as he shall think fit. Local limits of original jurisdiction.

XV.

The High Court shall have the like civil and maritime jurisdiction as that now possessed by the Supreme Court as a Court of Admiralty, and the like civil jurisdiction as that now possessed by the Supreme Court as a Court of Ecclesiastical Jurisdiction, and as a Court for the Relief of Insolvent Debtors. Admiralty, ecclesiastical, and insolvency jurisdictions.

XVI.

The High Court shall have the like jurisdiction as that now possessed by the Supreme Court in suits against the East India Company. Jurisdiction in suits against the East India Company.

XVII.

The High Court, in the exercise of its original jurisdiction, shall be empowered to receive, try, and determine suits of every description, provided the landed or other real property to which the suit may relate shall be situated, or, provided in all other cases the cause of action shall have arisen, or the defendant at the time when the suit may be commenced shall dwell, or carry on business, or work for gain, within the local limits of the ordinary original jurisdiction of the said Court, except that it shall not have any jurisdiction in cases in which the debt, or damage, or value of the property sued for, does not exceed one hundred rupees, and which fall within the jurisdiction of the Small Cause Court. Original jurisdiction as to suits.

XVIII.

The Small Cause Court at Madras [*Bombay*], besides the matters already excepted from its jurisdiction, shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditament, or to any toll, fair, market, or franchise, or anything in the nature thereof respectively, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage. Jurisdiction of Small Cause Court.

XIX.

No suit in the High Court shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief. Declaratory suit.

XX.

The High Court shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim. High Court not to entertain original suits already heard and determined.

XXI.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of the High Court. No person excepted from jurisdiction by reason of place of birth, or of descent.

XXII.

More than one Court of appellate or original jurisdiction constituted by Judges of the High Court may be sitting at the same time. More than one Court may be sitting at the same time.

XXIII.

Courts of appellate and original jurisdiction, how to be constituted.

The Chief Justice shall from time to time determine what and how many judges of the Court, whether with or without the Chief Justice, shall constitute Courts of appeal; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts of original jurisdiction.

XXIV.

Appeal from the High Court of original jurisdiction to the High Court in its appellate jurisdiction.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more judges of the High Court to one of the Appellate Courts constituted by judges of the High Court.

XXV.

Judges may be sent on special commission.

The judges of the High Court may be sent into the mofussil on special commission by the Governor in Council.

Criminal Jurisdiction.

XXVI.

High Court to exercise powers of Foujdary Adawlut [*Sudder Foujdary Adawlut*].

The High Court shall have all the jurisdiction now exercised by the Foujdary Adawlut of Madras [*Sudder Foujdary Adawlut of Bombay*], as a Court of Appeal, and also as a Court for the hearing of cases referred by the Session Judges, and for the revision of cases tried by the criminal Courts.

XXVII.

To hear appeals from decisions of magistrates of Madras [*Bombay*].

The High Court shall be empowered to hear appeals from decisions of the Magistrates of Madras [*Bombay*] in criminal trials.

XXVIII.

High Court to superintend subordinate Criminal Courts.

The High Court shall have superintendence over all the Courts of criminal judicature subject to its appellate jurisdiction, and over all criminal Courts subordinate to such Courts, with power to call for returns, and to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

XXIX.

Powers of the High Court in making rules of practice and framing forms for the subordinate Criminal Courts.

The High Court shall have power to make and issue all the general rules for regulating the practice and proceedings of the Criminal Courts subject to its superintendence, and also to frame forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be used and observed in the said Courts; provided, that such rules and forms be not inconsistent with the provisions of any law in force; and shall, before they are issued, have received the sanction of the Governor in Council.

XXX.

Local limits of original jurisdiction.

The High Court shall have original criminal jurisdiction within the local limits of its original civil jurisdiction.

XXXI.

Admiralty jurisdiction.

The High Court shall have the like criminal jurisdiction as that now possessed by the Supreme Court as a Court of Admiralty.

XXXII.

Jurisdiction as to persons in Madras [*Bombay*].

The High Court, in the exercise of its local original jurisdiction, shall be empowered to try all persons brought before it on charges preferred by the Advocate General, or by the Magistrates of Madras [*Bombay*], or by any private person who shall have first obtained the leave of the Court for that purpose.

XXXIII.

The High Court shall have original criminal jurisdiction over all persons residing within the limits of its general jurisdiction, and shall have authority to try, at its discretion, any persons brought before it on charges preferred by the Advocate General, or by any Magistrate or other officer specially empowered by the Government to act in this behalf, or by any private person who shall have first obtained the leave of the Court for that purpose. As to persons within its general jurisdiction.

XXXIV.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of the High Court. No person excepted from jurisdiction by reason of place of birth or of descent.

XXXV.

More than one Court of appellate or original jurisdiction, or for the hearing of cases referred by the Session Judges, or for the revision of cases called for by the High Court, may be sitting at the same time. More than one Court may be sitting at the same time.

XXXVI.

Every Court for the hearing of cases referred by the Session Judges shall consist of three judges. Courts for hearing referred cases.

XXXVII.

The Chief Justice shall, from time to time, determine what and how many judges, whether with or without the Chief Justice, shall from time to time constitute Courts of appeal; and what judges, whether with or without the Chief Justice, shall constitute Courts for the hearing of cases referred by the Session Judges; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts for the revision of cases called for by the High Court; and what and how many judges, whether with or without the Chief Justice, shall constitute Courts of original criminal jurisdiction. Courts of appellate and original jurisdiction, &c., how to be constituted.

XXXVIII.

There shall be no appeal to the High Court from any sentence or order passed in any criminal trial before the Courts of original criminal jurisdiction constituted by one or more judges of the High Court. No Appeal. It shall, however, be at the discretion of the Court to reserve any point of law for the opinion of the High Court. Court may reserve points of law.

XXXIX.

Provided, that on its being certified by the Advocate General, that in his judgment there is error in the decision of a point or points of law decided by the Court of original criminal jurisdiction, or that a point or points of law which have been decided by the said Court should be further considered, the High Court shall review the case, or such part of it as may be necessary, for the purpose of determining the question or questions raised by the certificate of the Advocate General. High Court to review on certificate of the Advocate General.

XL.

The judges of the High Court may be sent into the Mofussil on Special Commission by the Governor in Council. Judges may be sent on special commission.

Power of the Government to call for Records, &c.

XLI.

It shall be competent to the Government to call for records, returns, and statements, from the High Court, or from any other civil or criminal Court, in such form and manner as it may deem proper. Government may call for records, &c.

Civil Courts subordinate to the High Court.

I.

Grades of district judges.

The following shall be grades of Judges in each zillah or district:—
Zillah Judges.
Principal Sudder Ameens.
Moonsiffs.

The Principal Sudder Ameen was so called to distinguish him from the Sudder Ameen. With the abolition of the office of Sudder Ameen, the occasion for the distinctive title of the officer of the higher grade will cease. The position of the Principal Sudder Ameen, however, is one of high rank in the estimation of the native community, and some importance is attached to the title by which he is designated. We have therefore retained it. By the term "Moonsiff," in relation to the Madras Presidency, we mean the class of judges corresponding with the present District Moonsiffs.

II.

Their Courts, how to be denominated.

The Courts of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be denominated after the zillah, or city, or division in which they are respectively established.

III.

Their appointment, suspension, and removal.

The appointment, suspension, and removal of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be regulated by such rules and orders as the Governor in Council shall, from time to time, pass.

IV.

Declaration on entering upon office.

Each Civil Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:

"I, *A.B.*, appointed of the Court of
" do solemnly declare that I will faithfully perform the duties of my
" office to the best of my ability, knowledge, and judgment."

V.

Seal.

Each Civil Court is to use a seal, such as shall be prescribed by the Government.

VI.

Ministerial officers.

It shall rest with the Governor in Council, upon the report of the High Court, made after such communication with the Zillah authorities as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to the several Civil Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars as the said Governor in Council may deem proper. Upon the receipt of the instructions of the Governor in Council, the Judges of the Civil Courts shall make the appointments to the several offices of their respective establishments.

VII.

Civil Courts have cognizance of all suits unless specially barred,

The Civil Courts shall be empowered to take cognizance of all suits and complaints of a civil nature, with the exception of suits their cognizance of which is barred by any Act of Parliament, or by any regulation of the Madras [*Bombay*] Code, or by any act of the Council of India.

VIII.

unless already heard and determined.

The Civil Courts shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim.

Civil Courts subordinate to the High Court.

I.

Grades of district judges.

The following shall be grades of Judges in each zillah or district:—
Zillah Judges.
Principal Sudder Ameens.
Moonsiffs.

The Principal Sudder Ameen was so called to distinguish him from the Sudder Ameen. With the abolition of the office of Sudder Ameen, the occasion for the distinctive title of the officer of the higher grade will cease. The position of the Principal Sudder Ameen, however, is one of high rank in the estimation of the native community, and some importance is attached to the title by which he is designated. We have therefore retained it. By the term "Moonsiff," in relation to the Madras Presidency, we mean the class of judges corresponding with the present District Moonsiffs.

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The Courts of the Zillah Judges, Principal Sudder Ameens, and Moonsiffs shall be denominated after the zillah, or city, or division in which they are respectively established.

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VIII.

unless already heard and determined.

The Civil Courts shall not take cognizance, except in the way of appeal, or of review of judgment, of any cause which shall have been already heard and determined by a Court of competent jurisdiction between the same parties, or parties under whom the parties to the cause claim.

IX.

The Civil Courts are empowered to take cognizance of suits against collectors of the revenue and their assistants and native officers, salt agents and their assistants and native officers concerned in the manufacture of salt, opium agents and their assistants and native officers concerned in the manufacture of opium, collectors of the customs and their assistants and native officers employed in the collection of the customs, the mint and assay masters and their assistants and native officers, for acts done in their official capacity.

Government officers who are subject to the Civil Courts for official acts.

X.

No person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of any of the Civil Courts.

No Person excepted from jurisdiction by reason of place of birth or of descent.

XI.

The Moonsiffs shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts under the following pecuniary limitations; provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits to which their respective jurisdictions may extend:

Moonsiffs, their jurisdiction.

For money or other personal property not exceeding in amount or value the sum of two thousand five hundred rupees, provided the claim include the whole amount of the demand arising from the cause of action; but any plaintiff having cause of action for debt or damages above the sum of two thousand five hundred rupees may abandon the excess, and thereupon he shall, on proving his case, have a decree for an amount not exceeding such sum, and such decree shall be in full discharge of all demands in respect of such cause of action:

Pecuniary limitation.

For the property or possession of land or other real property, the computed value of which shall not exceed two thousand five hundred rupees.

XII.

If a defendant claim to set off a demand against the claim of a plaintiff to an amount in excess of the ordinary jurisdiction of the Moonsiff, the Moonsiff shall, nevertheless, have authority to try the case, and shall give judgment for the recovery of any sum which upon inquiry shall appear to be due to either party.

Jurisdiction in cases of set-off.

XIII.

The Principal Sudder Ameen shall be empowered to receive, try, and determine suits of every description cognizable by the Civil Courts in which the amount claimed or the computed value of the property may exceed the sum of two thousand five hundred rupees, provided the landed or other real property to which the suit may relate shall be situated, or provided in all other cases the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall dwell, or carry on business, or work for gain, within the limits of the district over which his jurisdiction may extend.

Principal Sudder Ameens, their jurisdiction.

XIV.

The Principal Sudder Ameen shall further exercise the same powers as the Moonsiff within the limits of the territorial division now included in the local jurisdiction of the Moonsiff fixed at the sudder or head station of the district.

To exercise the powers of Moonsiff at the Sudder station of the district.

The terms of this rule may require to be modified to meet the circumstances of different districts. We think it expedient to leave these details to be arranged by the Legislature of India.

XV.

The Zillah Judge shall have concurrent original jurisdiction with that of the Principal Sudder Ameen in regard to all suits above the value of two thousand five hundred rupees; provided, however, it shall be competent to a Zillah Judge, on cause shown, to receive, try, and determine a suit within the pecuniary limitation assigned to the Moonsiff, or to direct the transfer of any suit from any Court to any other Court of equal or superior jurisdiction in his district.

Zillah Judge, original jurisdiction.

XVI.

Moonsiff's jurisdiction excluded when there is no specification of value.

The Zillah Judge and the Principal Sudder Ameen shall have concurrent jurisdiction, and the Moonsiff shall not have jurisdiction, in cases in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

XVII.

Suits for real property situate within different jurisdictions of the same Zillah.

A suit for land or other real property situate within the limits of a single Zillah, but within the jurisdiction of different Moonsiffs' Courts, may, with the previous sanction of the Judge of such Zillah, be brought in any Court within the limits of which any portion of such property is situate, provided the entire claim in respect of the value of the property in suit be cognizable by such Court.

XVIII.

Suits for real property situate in different Zillahs.

In like manner, if the property be situate within the limits of different Zillah Courts, the suit may be brought in any Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property in suit is situate, but in such case the Court in which the suit is brought shall apply to the High Court for authority to proceed with the same; and if the suit is brought in the Court of the Principal Sudder Ameen or Moonsiff, the application shall be submitted, through the Zillah Judge, to whom such Principal Sudder Ameen or Moonsiff is subordinate.

XIX.

Suits for real property situate partly within the jurisdiction of the High Court, and partly in another jurisdiction.

If the property be situate partly within the limits of the ordinary original jurisdiction of the High Court, and partly within those of any other Court or Courts, the suit may be brought either in the High Court or in any other Court, otherwise competent to try it, within the jurisdiction of which any portion of the land or other real property is situate. If the suit is brought in any other Court than the High Court, application for authority to proceed with the same shall be made to the High Court, as directed in the last preceding article.

XX.

Declaratory suit.

No suit in any of the Civil Courts shall be open to objection on the ground that a merely declaratory decree or order is sought thereby, and it shall be lawful for the Court to make binding declarations of right without granting consequential relief.

XXI.

By whom judicial decisions may be revised.

The judicial decisions of the Courts of Justice shall be subject to revision only by the constituted Courts of appellate jurisdiction, or by themselves under the rules of the code of procedure applicable to reviews of judgment.

LAW TO BE ADMINISTERED.

In all cases in which a suit is brought in the first instance in the High Court, or in which it is removed from the Court of Small Causes at Madras [*Bombay*] to the High Court, or a question of law or equity is reserved by the Judges of the Court of Small Causes at Madras [*Bombay*] for the opinion of the Judges of the High Court, the Court shall (until otherwise provided) be guided in its decisions by the laws administered by Her Majesty's Supreme Court of Judicature at Fort Saint George in Madras [*at Bombay*], at the time of the passing of this Act, except in so far as may be inconsistent with anything herein contained. And in all cases in which a suit is brought in the first instance in any Court other than the High Court, or the Court of Small Causes at Madras [*Bombay*], the Courts shall (until otherwise provided) be guided in their decisions by the laws and regulations in force at the time of the passing of this Act at the place where such Court is situate, except in so far as may be inconsistent with anything herein contained.

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the party in person, or through an attorney or vakeel duly authorized to act on his behalf. The authority shall in all cases be in writing, and shall be filed with the proper officer of the Court. When so filed, it shall be considered to be in full force until revoked, and the revocation shall be intimated in writing to the officer; and all notices given to, or processes served on, the attorney or vakeel of either party, or left at the office or ordinary residence of such attorney or vakeel, relative to the suit, and whether the same be for the personal attendance of the party or not, shall be presumed to be duly communicated and made known to the party whom the attorney or vakeel represents, and shall be as effectual for all purposes in relation to the suit as if the same had been given to or served on the party in person, unless the Court shall otherwise direct.

IV.

Party appearing in person to enter his name and address in a book.

In all cases in which a party shall appear in person, and the cause shall not be decided on the day of his appearance, he shall enter his name and place of abode in a book to be kept for that purpose by the proper officer of the Court, if his place of abode shall be within a radius of eight miles from the Court-house; otherwise, he shall enter in the said book the name and place of abode of some person residing within such distance of the Court-house, on whom he may wish that all notices or process in the cause should be served on his behalf. And all notices or process relative to the suit which may thereafter be left at the place so entered in the register shall be deemed good service on the party, and shall be as effectual for all purposes relative to the suit as if the same had been served on the party himself in person, unless the Court shall otherwise direct. If no such entry as aforesaid shall be made in the said register, the fixing up of such notices or process in some conspicuous place in the office of the clerk or other proper officer of the Court, and also in some conspicuous place in the Court-house, shall in like manner be deemed to be good service, and shall be as effectual for all purposes relative to the suit as if such entry had been made, and the notice or process had been left at the place so entered in the register.

V.

Native officers or soldiers who cannot obtain leave of absence may authorize any person to appear for them;

When a native officer or soldier in the service of the Government is a party to a suit, and cannot obtain a furlough or leave of absence for the purpose of prosecuting or defending it in person, he may authorize any member of his family or any other person to conduct and manage the suit or the defence, as the case may be, in his stead. The authority shall in all cases be in writing, and shall be signed by the native officer or soldier in the presence of his commanding officer, who shall countersign the same, and it shall be filed with the proper officer of the Court. When so filed, the counter signature of the commanding officer shall be sufficient proof that the authority was duly executed, and that the native officer or soldier by whom it was granted could not obtain a furlough or leave of absence for the purpose of prosecuting or defending the suit in person.

VI.

Who may appear personally, or appoint an attorney or vakeel.

Any person who may be authorized, as in the last preceding Article mentioned, by a native officer or soldier to prosecute or defend a suit in his stead, shall be competent to prosecute or defend it in person in the same manner as the native officer or soldier could do if present; or he may appoint an attorney or vakeel of the Court to prosecute or defend the suit on behalf of such native officer or soldier. And all notices or process relative to the suit which may be served upon any person who shall be so authorized as aforesaid by a native officer or soldier, or upon any attorney or vakeel who shall be appointed as aforesaid by such person to act for or on behalf of such native officer or soldier, shall be as effectual for all purposes relative to the suit as if the same had been served on the party in person or on an attorney or vakeel directly appointed by him.

CHAPTER II.

OF A SUIT TILL FINAL DECREE.

Of the Institution of Suits.

VII.

All suits shall be commenced by a summons to the defendant. Suits to commence with summons.

VIII.

The application for a summons shall be made to the Clerk or other proper officer of the Court by the party in person, or through one of the attorneys or vakeels of the Court, duly authorized to act on his behalf, by an instrument in writing, which shall be delivered to the officer at the time of making the application. Summons how to be applied for.

IX.

The application shall be accompanied by the following particulars, distinctly written in the language in ordinary use in proceedings before the Court, viz.— Particulars to be given with the application.

1. The name, description, and place of abode of the plaintiff.
2. The name, description, and place of abode of the defendant, so far as they can be ascertained.
3. The relief sought for, the subject of the claim, the cause of action, and when it accrued. The following are instances:

If the suit be for money due on a bond or other written instrument:—Payment of Company's rupees   due on (a bond, tumussook, hoondee, or bill of exchange, as the case may be) for the sum of Company's rupees   , bearing date the   day of   , and payable on the   day of   .

If the suit be for the price of goods sold:—Payment of Company's rupees   on account of   maunds of (rice, indigo, sugar, or as the case may be), sold on the   day of   , and the price of which became payable on the   day of   .

If the suit be for damages for slanderous words:—Payment of Company's rupees   , on account of injury done to the Plaintiff, by calling him on the   day of   , a (thug, or thief, or as the case may be), or by causing to be published on the   day of   , in a newspaper entitled the   , (or otherwise as the case may be) the following slanderous words concerning him (stating them at length, as the case may be).

4. When the claim is for any property other than money, its estimated value Company's rupees. The following are instances:

If the suit be for a Zemindary, or share in a Zemindary;—Possession of a Zemindary, or of   share in a Zemindary, called   situate in the zillah of   , the Government Revenue of which is Company's rupees   , and estimated value Company's rupees   , of which the Plaintiff was dispossessed (or forcibly or fraudulently dispossessed, if the case be so,) on the   day of   ; or to which the Plaintiff became entitled by inheritance from   , on or about the   day of   .

5. When the claim is for a declaration of right, or the fulfilment of a duty in which the plaintiff is interested, or that the defendant be restrained from the committal of any breach of a contract or other injury to the plaintiff, or for anything not susceptible of pecuniary valuation, it shall not be necessary to specify the estimated value of any property or any sum of money by way of damages.

6. In all suits by or against the Government, or one of its officers in his official capacity, or the East India Company, or any other Corporation, or any Company authorized to sue and be sued in the name of an officer or Trustees, the words "The Government," or "The Collector of   ," or otherwise as the case may be, or "The East India Company," or name of the Corporation or name or names of the officer or Trustees of the Company, shall be inserted in Nos. 1 and 2, instead of the name and description of the

Plaintiff or Defendant. But in all other cases it shall be necessary to specify the names of all the parties.

This Code of Procedure contains no rules on the subject of the valuation of property in civil suits. We think it our most expedient course to leave it to the Government of India to decide whether any, and what, alterations should be made in the law on this subject, in the event of our recommendation in regard to the abolition of the institution fee being adopted.

X.

Application to be rejected if the claim is beyond the jurisdiction of the Court.

If the amount or estimated value of the claim, as stated by the plaintiff, be beyond the jurisdiction of the Court the officer shall refuse to receive the application.

XI.

Reference to be made to the Judge in a suit for property in different jurisdictions.

If the suit be for land or other real property, situate partly within the jurisdiction of the Court, and partly within the jurisdiction of some other Court or Courts, the officer shall submit the application for the order of the judge.

XII.

When the claim is within the Court's jurisdiction, the officer shall enter the particulars in a Register.

If the amount or estimated value of the claim, as stated by the plaintiff, be within the jurisdiction of the Court, the above particulars shall be entered by the officer in a book to be kept for the purpose, and called the Register of Civil Suits, and the entries shall be numbered in every year according to the order in which the application shall be made.

XII.

Form of the Register.

The Register shall be kept in the form contained in the Schedule (A.) hereunto annexed; and a certified copy of the Register, under the seal of the Court, shall be received in evidence in all courts of justice in India.

XIV.

Document of debt should be shown to the officer.

When the plaintiff's demand is founded on any instrument in writing, as constituting or acknowledging the demand, such as a bond, tumussook, bill of exchange, hoondee, ikrar, or acknowledgment, the same shall be produced and shown to the officer at the time of applying for the summons, and a copy of the instrument shall be delivered to him at the same time, for the purpose of being served with the summons on the defendant; and if such instrument shall not be produced it shall not be received in evidence on behalf of the plaintiff at the hearing or trial of the cause, without the sanction of the Court. When there is more than one defendant, a copy of the instrument for each defendant shall be delivered to the officer; unless all the defendants are members of one joint and undivided Hindoo family, in which case one copy of the instrument will be sufficient.

XV.

Summons may be for settlement of issues, or final disposal.

The person applying to the officer for a summons shall state at the time of his application, whether he requires a summons for the first hearing and settlement of issues or for the final disposal of the cause.

Of Summoning the Defendant.

Form of Summons.

XVI.

The summons shall be in the following form, or to the following effect:

No. of Suit

In the Court of the   of

holden at

Plaintiff.

Defendant.

[Name, description, and address of Defendant.]

You are hereby summoned to appear at this Court on the day of   at   in the forenoon, to answer [name, description, and address, of Plaintiff,] to a claim for [here state the particulars, as in the Register referred to in Article XIII.]

Dated the   day of

(Signature.)

Costs of summons and service

This summons must be served on or before the   day of

N.B.—See notice at back.

XVII.

Special directions shall be indorsed on the summons, which, if the application be for a summons for the first hearing, and settlement of issues, shall be as follows:— Directions to be indorsed on summons to settle issues.

1. If you admit the Plaintiff's claim, you must deliver your admission in writing, under your signature, to the Officer of the Court, together with the costs marked on the summons, five clear days before the day for appearing to this summons; but you may enter your admission at any time on or before the day of appearing, subject to the payment of further costs.

2. If you admit any part of the Plaintiff's demand, and pay to the officer of the Court the amount so admitted, together with the costs, five clear days before the day of appearance, you will avoid any further costs, unless the Plaintiff at the hearing shall prove a demand against you exceeding the sum so paid into Court.

3. If you deny the Plaintiff's claim, or any part of it, you must appear on the day fixed in the summons, and be prepared to answer all questions that may be put to you by the Judge, relating to the Plaintiff's demand, and your liability thereto, and to state any objections which you may have to make to the same.

4. You must bring all documents or instruments in writing of any description, which you may wish to produce in explanation, or as evidence of your defence to the suit, or of any counter-claim against the Plaintiff which you may desire to make a set-off to his demand against you; and, in particular, you must bring with you all or any instruments in writing or things which may be specified in any notice to produce that accompanies this summons, or that may be served on you within a reasonable time before your appearance thereto.

5. If you do not appear in person, you must employ one of the Attorneys or Vakeels of the Court to appear in your stead, and must furnish him with the documents, instruments, or things above referred to, and with any information that you possess in regard to the Plaintiff's demand, and your own defence thereto; so as to enable him to answer for you in all respects as you could do yourself if interrogated in person. And if you fail in any of these matters, and your Attorney or Vakeel is unable to answer any questions that may be put to him on your behalf by the Judge, and the Judge shall be of opinion that the documents, instruments, or things referred to, are such as you ought to have produced, or that the questions put to your Attorney or Vakeel are such as you ought to be able, or are likely to be able, to answer, if interrogated in person, the hearing of the case will be postponed, a notice will be given to your Attorney or Vakeel requiring your personal appearance, and the production of the documents, instruments, or things referred to, and you will have to pay all the costs; and if you should fail to appear in obedience to such notice, judgment will be given against you by default.

6. If you do not appear on the day fixed in the summons, either in person or by an Attorney or Vakeel of the Court, judgment will be given against you by default.

XVIII.

If the application be for a summons finally to dispose of the case, this further direction shall be endorsed thereon:— Further direction on summons for final disposal of the case.

7. You are required to take special notice, that the day fixed in the summons for your appearing, is appointed for the final disposal of the case, and that you must be prepared to produce all your witnesses. If you fail to do so, and the Judge shall think proper to postpone the cause to another day, in consequence of your default, you will have to pay all the costs that may be incurred by the postponement. If your witnesses will not come at your request, you should apply to the Officer of the Court, either in person or by Attorney or Vakeel, not later than the day of , for subpœnas to compel their attendance.

XIX.

Time for appearance on a summons to settle issues.

If the summons be to settle the issues, the day for the appearance of the Defendant shall not be less than ten days, exclusive of the day of service and day of appearance, above the time that may be necessary for the service of the writ, such time to be computed at the rate of one day for every eight miles in a straight line that the residence of the Defendant may be distant from the Court.

XX.

Time for appearance on a summons for final disposal of the case.

If the summons be for a final disposal of the case, the day to be fixed for the appearance of the Defendant shall not be less than fifteen days (exclusive as aforesaid) above the time that may be necessary for the service of the writ, such time to be computed in the manner above mentioned.

Service of Summons on the Defendant.

XXI.

Summons shall be served by the officer.

The writ of summons shall be delivered to the Bailiff or other proper officer of the Court, to be served by himself or one of his subordinates, and such officer shall be responsible for its due service.

XXII.

Latest day of service to be written at foot of the summons.

A day on or before which the summons must be served, shall be written at the foot of the summons before delivery to the officer, and the day so to be written shall be always such as to allow the Defendant the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

XXIII.

How service shall be made.

Service of the summons shall be made by exhibiting the original under the seal of the Court, and delivering or tendering a copy thereof and of the endorsements thereon, together with any notice to produce, and copies of any documents or instruments in writing that may have been delivered to the Clerk, or proper officer of the Court, at the time of applying for the summons, for the purpose of being served therewith.

XXIV.

When there are several defendants.

When there are several Defendants, service of the summons shall be made on each Defendant, unless all the Defendants are members of one joint and undivided Hindoo family; in which case service on any one of the Defendants shall be sufficient, if made at the family dwelling-house of the joint and undivided family.

XXV.

Service to be on defendant in person, or on his accredited agent.

Whenever it may be practicable, the service shall in all cases be on the Defendant in person, unless he have an accredited agent, empowered to accept the service; in which case service on such agent shall be sufficient.

XXVI.

Who may be an agent for this purpose.

Any Attorney or Vakeel of the Court, or any other person residing within its local jurisdiction, may be appointed an accredited agent to receive the services of summonses and all other judicial process. The appointment shall always be in writing, and shall be filed with the Clerk or other proper officer of the Court to which the agent is accredited, and shall be considered to be in full force until it shall be revoked, and such revocation be recorded with the proper officer of the Court.

XXVII.

Accredited agents of Government and the East India Company.

The Attorney to the East India Company shall be accounted the accredited Agent of the Government and of the East India Company for the purpose of receiving services of summonses, and all other judicial process against the Government or the East India Company that may be issued out of the High Court, and the Government Pleader in all other Courts shall in like

manner be accounted the accredited Agent of the Government for the purpose of receiving services of summonses and all other judicial process against the Government, issuing out of the Court in which he may be the Pleader of Government.

XXVIII.

If defendant cannot be found, service may be made on a member of his family.

When the Defendant cannot be found, and has no accredited agent empowered to accept the service, it may be made on any adult member of his family residing with him.

XXIX.

The person served is to be required to indorse the summons.

In all cases where the summons is served on the Defendant personally, or any agent or other person on his behalf, the serving officer shall require the signature of the person on whom the service may be made, to an acknowledgment of service to be indorsed on the original summons.

XXX.

If the summons cannot be served, it is to be returned with an indorsement of non-service.

When the Defendant cannot be found, and there is no agent or other person empowered to accept the service, nor any member of his family on whom the same can be served, the serving officer shall fix the copy of the summons with its indorsement, and accompanying notice and copies of documents, if any be annexed thereto, on the outer door of the Defendant's dwelling-house; and if he shall have no dwelling-house in the place, the serving officer shall return the summons to the Court from whence it issued with an indorsement thereon that he has been unable to serve it.

XXXI.

If served, time and manner of service to be indorsed.

The serving officer shall in all cases in which the summons has been served, endorse on the original summons the time and the manner when and how it was served.

XXXII.

If the summons be returned unserved, the Plaintiff may apply to the Court to substitute service.

In all cases in which a summons shall be returned to the Court without naving been served on the Defendant, the Plaintiff shall be at liberty to apply to the Court for an order to substitute some other mode of serving the summons for service in the manner above specified; and if it shall appear to the Court that there is reasonable ground for believing that the Defendant is keeping out of the way of its officer, for the purpose of avoiding the service of the summons, it shall pass an order directing that the summons may be served by fixing up copies thereof, with its endorsement and accompanying notice and copies of documents, if any be annexed thereto, upon some conspicuous place in the Court House, and also upon the door of the house in which the Defendant shall have last resided if it be known where he last resided; or that the summons shall be served in such other manner as the Court shall think proper. And the service which shall be substituted by order of the Court, shall be as effectual to all intents and purposes as if it had been effected in the manner above specified.

XXXIII.

When service is substituted, the time for appearance is to be enlarged.

Whenever service shall be substituted by order of the Court, by virtue of the power contained in the last article, the time for the appearance of the Defendant shall be enlarged, so as to allow him the full benefit of the clear days to which he may be entitled under Articles XIX. and XX.

XXXIV.

How the summons is to be served when the Defendant is out of the jurisdiction.

If the Defendant be resident within the jurisdiction of any other Court than that in which the suit may be instituted, and has no accredited agent empowered to accept the service, the summons shall be transmitted by the Clerk or proper officer of the Court to the Clerk or proper officer of the Court within whose jurisdiction the Defendant may reside, with such enlargement of the time for appearance as the case may require. As the Clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the Bailiff or other proper officer of his own Court, to be served in the manner above directed; and upon the return of the summons by the serving officer, it shall be retransmitted to the Clerk or proper officer of the Court from whence it originally issued.

XXXV.

How it is to be served when he is out of the territories of the East India Company.

If the defendant be resident at some place out of the territories of the East India Company, and have no agent empowered to accept the service, and the suit be for landed or other real property, the summons may be served on any person in charge of the landed or other real property to which the suit may relate, and the service shall be as effectual for all purposes of the suit as if the person had been duly empowered to accept it. If there shall be no person in charge of the landed or other real property to which the suit relates, on whom the summons can be served, or if the suit shall not relate to landed or other real property, but the defendant is nevertheless subject to the jurisdiction of the Court by reason of the cause of action having arisen within the limits of its jurisdiction, a copy of the summons and of the endorsements thereon, together with any notice to produce, and any copies of any documents or instruments in writing that may have been delivered to the clerk or other proper officer of the Court, at the time of applying for the summons for the purpose of being served therewith, shall be addressed to the defendant at the place where he may reside, and forwarded to him by post: Provided that in all cases in which a defendant is resident at some place out of the territories of the East India Company, the time for the appearance of the defendant shall be regulated by the time which may be required for communication by post between the place at which the Court is holden and the place where the defendant resides; and provided also, that if on the day fixed for the hearing of the cause, or on any other day subsequent thereto on which the cause may be called on, the defendant shall not appear in person, or by attorney or vakeel, the plaintiff shall apply to the judge, and it shall be lawful for the judge to direct that the plaintiff shall be at liberty to proceed with his suit in such manner and subject to such conditions as to such judge may seem meet; provided always, that the plaintiff shall prove his case to the satisfaction of the judge, and the making such proof shall be a condition precedent to his obtaining judgment.

XXXVI.

How native officers and soldiers are to be served.

When the defendant is a native officer or soldier in the service of the Government, a copy of the summons and of the indorsements thereon, together with any notice to produce and any copies of any documents or instruments in writing that may have been delivered to the clerk or other proper officer of the Court for the purpose of being served therewith, shall be transmitted by the Judge to the commanding officer of the corps to which the native officer or soldier shall belong, for the purpose of being served on such native officer or soldier. The commanding officer, after causing the summons and its accompanying notices and copies of documents to be served on the party to whom it is addressed, if practicable, shall return the summons to the Judge, with the written acknowledgment of the party indorsed thereon. If from any cause the summons cannot be served upon the native officer or soldier to whom it is addressed, it shall be returned by the commanding officer to the Judge from whom it may have been received, with information of the cause which has prevented the service of it. In such case the Court shall either make a further reference with the view of causing the summons to be duly communicated to the native officer or soldier, or shall adopt such other measures for that purpose as, on a consideration of the circumstances of each case, shall appear to be proper.

How privileged Persons are to be summoned.

XXXVII.

Substitutes for the summons in the case of privileged persons.

Nothing contained in the preceding rules shall be construed to prevent the Court from substituting for the summons, a letter Roobekaree, or other appropriate proceeding under the seal of the Court, when the person whose presence is required is of a rank or class in society which entitles him to such mark of consideration; and in such cases the letter or other proceeding shall be treated in all respects as a summons, and shall be accompanied with a copy of the directions which would ordinarily be indorsed on the summons, and with any notice and copies of any other documents which would have been delivered therewith, if a summons had been issued for the appearance of the party.

XXXVIII.

A list of the persons (if any) residing within the limits of the Court's jurisdiction, who are entitled to the mark of consideration mentioned in the last article, shall be kept in the office of the Clerk or other proper officer of the Court, and any application for a summons against a person whose name is entered in the said list, shall be referred by the officer to the Judge for his order before the summons shall be issued to the Defendant.

List of privileged persons to be kept by the officer of Court.

XXXIX.

When a letter or other proceeding is sent to a party on account of his being of a class or rank of society that entitles him to that distinction, it may be transmitted through the post-office, or by a special messenger selected by the Court, or in any other manner that the Court may deem sufficient; unless the party shall have an accredited agent empowered to accept service of judicial process; in which case delivery to such agent shall be sufficient service. When the letter is transmitted through the post-office, or by special messenger, proof that it was duly posted, or was delivered to the messenger, shall be sufficient proof of its due service, in the absence of evidence to the contrary.

Service how to be made on privileged persons.

How Persons not before the Court may be made Parties to a Suit.

XL.

In every suit concerning the succession or right of inheritance to a zemindary, talook, land, house, or other real property, to which there may be more persons than one who by the Hindoo or Mahomedan law (regard being had to the religion of the claimants) would be entitled to a portion of the estate, there shall be issued, at the same time with the summons to the particular Defendant or Defendants, and in addition thereto, a proclamation setting forth the names of the parties, the nature of the suit, the day fixed for the hearing of the cause, and whether it have been fixed for the first hearing and settlement of issues, or for final disposal, and calling on all persons having any claim to any share or interest in the property, to appear on the said day, either in person or by an Attorney or Vakeel of the Court, and be prepared to state their claims to the Court, and to support them by proper evidence.

In certain cases of inheritance, a proclamation for claimants to be issued at the same time as the summons to the Defendant.

XLI.

The proclamation shall be read aloud by the officer employed to serve the summons on some public place, within the limits of the zemindary, talook, land, or other real property concerning which the suit may be brought, and copies thereof shall be fixed up in some conspicuous part of the Court-house, and on the outer door of the family dwelling house of the person the right of succession or inheritance to whose property is in question, or of the house in which he may have last resided. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the suit may be brought.

Proclamation how to be published.

XLII.

If in any suit it shall appear to the Court at any hearing of the cause, that all the persons who may be entitled to some share or interest in the property in dispute have not been made parties to the suit, it shall be competent to the Court to adjourn the hearing of the cause to a future day to be fixed, and to direct a proclamation to be issued calling upon all persons having any claim to any share or interest in the property to appear on the day so to be fixed, and be prepared to state their claims to the Court, and to support them by proper evidence. If the suit shall relate to the succession or right of inheritance to a zemindary, talook, land, house, or other real property, the proclamation shall be published or made known in the manner prescribed in the last preceding article. If the suit shall relate to any other matter or thing,

Proclamation may be issued in any suit by order of the Court.

a copy of the proclamation shall be fixed up in some conspicuous part of the Court house, and it shall also be competent to the judge to direct that the proclamation shall be published or made known in such other manner as he may think proper. If the suit shall be brought in any Court subordinate to the Zillah Judge, a copy of the proclamation shall in all cases be fixed up in some conspicuous part of the Court of the Zillah Judge, as well as in the Court of the particular judge in whose Court the suit may be brought.

XLIII.

If any claimant appear he is to be treated as a party to the suit.

If any claimant shall appear on the day fixed in any proclamation issued under the provisions of Article XL. or of Article XLII., the Court shall investigate his claim and pronounce a decision thereon, in the same way as if he had been made originally a party to the suit.

Of Suits against the Government and its Officers, and the East India Company.

XLIV.

If the suit be against the Government or its officers, the application for a summons is to be referred to the Judge.

If the suit be against the Government, or against any of its officers for acts which the Plaintiff at the time of applying for the summons alleges to have been done in an official capacity, the application for the summons shall be referred by the officer to the Judge for his order before any summons shall be issued to the Defendant.

XLV.

In cases where the Civil Courts have no direct jurisdiction against the officers of Government, the Applicant is to be referred to the Government.

If it shall appear to the Judge, after examining the applicant, that the act complained of was done pursuant to a special order originating with the Government, or with the Board of Revenue, and that the officer by whom the act was done is not liable to be sued for it, the Judge shall direct the person who may have made the application for the summons to apply in the first place to the Government by petition, stating wherein he considers himself injured under the Regulations of the Madras [*Bombay*] code, or the Acts of the Council of India, and praying that the Government will order the Court of Civil Judicature in which the cause may be cognizable, to try the contested points or matters by the Regulations or Acts. If the Government shall deem proper to grant the prayer of such petition, and the plaintiff shall file an order to the above effect with the clerk or proper officer of the Court; or if a plaintiff shall in the first instance, with his application for a summons in a case of the aforesaid description, produce an order from the Government to the effect aforesaid, and it shall appear to the Judge that the case is within his jurisdiction and cognizable under the order, he shall direct the summons to be issued to the officer by whom the act complained of may have been done, in the same way as is herein-before prescribed for the issuing of summonses to private individuals; and in no case shall a summons be issued to any defendant in a case of the nature aforesaid without an order to the effect aforesaid.

XLVI.

In cases where the Civil Courts have direct jurisdiction against the officers of the Government, the Judge is to refer to the Board of Revenue.

If it shall appear that the act complained of was done without any order of the Government, or of the Board of Revenue, and that the act complained of is one for which the officer by whom it was done is declared amenable under the Regulations of the Madras [*Bombay*] code or the Acts of the Council of India, the Judge shall transmit the particulars of the claim as set forth in the Register referred to in Article XIII., to the Board of Revenue, together with copies of any documents or instruments in writing that may have been delivered to the clerk or proper officer of the Court at the time of applying for the summons, for the purpose of being served therewith.

XLVII.

How the Board of Revenue is to proceed in cases referred to it.

The Board of Revenue, after making due inquiries on the subject, shall determine whether the party complaining is entitled to redress directly from Government, or whether he shall be left to prosecute the case in the regular course of law; and if they shall be of opinion that the party should be left to

prosecute the case in the regular course of law, they shall inform the Judge by whom the case may have been referred to them of their determination to that effect, and also whether the case is to be defended by the public officer as a suit against the Government, or by the person affected by the complaint in his individual capacity.

XLVIII.

At the expiration of   days from the transmission, or at any earlier period when the Judge may receive intimation from the Board of Revenue that it has been decided that the party complaining shall be left to prosecute his case in the regular course of law, the Judge shall direct a summons to be issued to the officer whose act has been complained of, in the same manner as is herein-before prescribed for the issuing of summonses to private individuals.

When the Summons is to be issued.

XLIX.

If the suit be against the East India Company, the summons shall be served on their attorney at Madras [*Bombay*], who shall appear for the said Company on the day therein mentioned, to answer on their behalf to the suit of the plaintiff. And if the said attorney shall appear on the day mentioned in the summons, and answer to the suit of the plaintiff, or if he shall not appear on the said day, or on any subsequent day on which his appearance may be required during the progress of the suit, or if he shall so appear, but shall refuse or be unable to answer any question that may be put to him by the Court relative to the suit, the procedure shall be the same in all respects as is herein-after provided for suits against individual parties, or as near thereto as the circumstances of the case will admit.

Suits against the East India Company.

Of Arrest before Judgment.

L.

If in any suit the Defendant, with intent to avoid or delay the Plaintiff, is about to leave the jurisdiction, the Plaintiff may, either at the institution of the suit, or at any time thereafter until final judgment, make an application to the Court to demand that security be taken for the appearance of the Defendant, to answer any judgment that may be passed against him in the suit.

When Defendant is about to leave the jurisdiction Plaintiff may apply that security be taken for his appearance.

LI.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be of opinion that there is probable cause for believing that the Defendant is about to leave its jurisdiction, with the intent of avoiding or delaying the Plaintiff, it shall issue a warrant to the proper officer, enjoining him to bring the Defendant before the Court, that he may give good and sufficient bail for his appearance at any time when called upon while the suit is pending, and until execution of any decree that may be passed against him in the suit; the surety or sureties undertaking, in default of such appearance, to pay, to an extent to be fixed by the Judge and specified in the warrant, any sum of money that may be adjudged against him in the suit, with costs.

How the Court is to proceed on such application.

LII.

The sureties for the personal appearance of the Defendant may at any time apply to the Court to be relieved from their engagements as sureties, whereupon the Court shall issue its warrant directing that the Defendant be brought before it. On the appearance of the Defendant to such warrant, or on his voluntary surrender, the Judge shall direct the engagement of the sureties to be cancelled, and shall call upon the Defendant to give fresh security, and in default thereof shall commit him to custody.

Sureties may apply to be relieved from their engagements.

LIII.

Should a Defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with the costs of the suit, the Court may accept such deposit, and forthwith discharge the Defendant.

Deposit in lieu of bail.

LIV.

Defendant to be committed to custody if he cannot give security.

In the event of the Defendant neither furnishing security, nor offering a sufficient deposit, he may be committed to custody until the decree shall have been passed.

LV.

When the Defendant is about to leave the country the application to be made to the High Court.

If in any suit the Defendant is about to leave the jurisdiction of the High Court with intent to remain absent so long that the Plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the Defendant, the Plaintiff may make an application to the High Court, or to any Judge or Judges thereof, to the effect and in the manner aforesaid, and the procedure shall be in all respects the same as herein-before provided, except that the security for the appearance of the Defendant shall be for his appearance in the Court, whatever it may be, in which the suit is pending.

Of Sequestration before Judgment.

LVI.

In certain cases Plaintiff may apply for a sequestration of Defendant's property.

If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, it shall be lawful for the Court, on the application of the plaintiff in manner aforesaid, either at the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, when required; and on his failing to give such security, to direct that any property real or personal belonging to the defendant, or any debts due to him, or any money standing in his name or to his account and in deposit in any court of justice, or any office of Government, or at his credit in any bank, or any interest or dividends payable or thereafter to become payable on any Government paper or shares in the capital or joint stock of any banking, railway, or other public company or corporation, standing in his name, or such a portion of such property, debts, or money as may be sufficient to fulfil the decree, shall be attached, and held in sequestration until the further order of the Court.

LVII.

Application, how to be made.

The application shall be accompanied with the following particulars distinctly written in the language in use in proceedings before the Court, viz. the nature and amount of the claim, the property required to be sequestrated, and the supposed value of each article or item thereof; and the Plaintiff shall, at the time of making the application, declare that the claim is a just one, and that the Defendant is about to dispose of or remove his property in manner aforesaid.

LVIII.

Defendant may be called on for security.

If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the Defendant intends to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, and if the Plaintiff shall in person or by his agent enter into a bond rendering himself liable in such sum as may be judged adequate for all injury arising from the sequestration, in the event of his demand being disallowed, either wholly or in part, the Court shall thereupon issue a warrant to the proper officer commanding him to require security from the Defendant, in such sum as may be specified in the order, to produce and place at the Court's disposal, when required, the said property, or a portion thereof sufficient to fulfil the decree.

LIX.

If security is not provided property may be sequestrated.

If such security is not furnished within the time specified in the order, the Court shall direct that the property, debts, or money mentioned in the particulars which accompanied the plaintiff's application, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached, and kept under sequestration until further order.

LX.

The process for requiring security and for attachment and sequestration, when the property shall consist of goods and chattels, or other personal estate and effects, may be issued successively or simultaneously, as the Court shall think proper.

Process for taking security and for sequestration may be simultaneous.

LXI.

The attachment and sequestration shall be made, according to the respective natures of the property to be attached and sequestrated, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money.

How the sequestration is to be made.

LXII.

In all cases of sequestration before judgment, the Court which passed the order for the sequestration shall at any time remove the same, on the Defendant's furnishing security as above required, together with security for the costs of the sequestration.

Sequestration may be removed when security is furnished.

LXIII.

If, on the trial of the suit, it shall be discovered that the sequestration was applied for on insufficient grounds, or if the Plaintiff's claim is disallowed, either wholly or in part, the Court shall (unless the Defendant shall in preference seek redress by a civil action for damages) award against the Plaintiff in its decree the whole of the amount specified in his penalty bond, or such part thereof as it may deem a reasonable compensation to the Defendant for the expense or injury occasioned to him by the Plaintiff.

Compensation for needless sequestration.

LXIV.

Sequestrations before judgment shall not bar any person holding a decree against the Defendant from attaching the property under sequestration, or affect the rights of persons not parties to the suit.

Sequestration not to bar the execution of decrees or injure third parties.

LXV.

But if the party at whose instance the property was sequestrated points out other property of the Defendant unattached, the creditor shall be bound in the first instance to attach and sell such property in execution of his decree, before selling the property under sequestration.

But person holding the decree is first to attach any other property of the Defendant that may be pointed out.

LXVI.

Whenever lands paying revenue to Government form the subject of a suit, if the party in possession of such lands shall neglect to pay the Government revenue, and a public sale shall in consequence be ordered to take place, the party not in possession shall, upon payment of the revenue due previously to the sale, (and with or without security at the discretion of the Court,) be put in immediate possession of the lands, and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of 1 per cent. per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause.

Special case in which Plaintiff may be put in immediate possession of land the subject of suit.

Of Injunctions.

LXVII.

In any suit in which it shall be shown to the satisfaction of the Court that any property which is in dispute in the cause is in danger of being wasted or damaged by any party to the suit, it shall be lawful to the Court to issue its injunction to such party, commanding him to refrain from doing the particular act or acts complained of, or to give such other orders for the purpose of staying and preventing him from wasting or damaging the property, as to the Court may seem meet. And in all cases in which it may appear to the Court to be necessary for the preservation or the better management or custody of any property which is in dispute in a cause, it shall be lawful to the Court to appoint a receiver or manager of such property, and if need be to remove the person or persons in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such

Cases in which an injunction to stay waste may be granted;

or in which a receiver or manager may be appointed.

receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court may seem proper.

LXVIII.

Special rule in actions for injunctions.

In any suit for restraining the defendant from the committal of any breach of contract or other injury, and whether the same be accompanied with any claim for damages or not, it shall be lawful for the plaintiff at any time after the commencement of the suit, and whether before or after judgment, to apply *ex parte* to the Court for an injunction to restrain the defendant from the repetition, or the continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and such injunction may be granted or denied by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as to such Court shall seem reasonable and just, and in case of disobedience such injunction may be inforced by imprisonment in the same manner as a decree for specific performance: provided always, that any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Of Withdrawing Suits.

LXIX.

How the Plaintiff may withdraw from a suit

If the Plaintiff be desirous of withdrawing from the cause, he may give notice thereof to the Clerk or proper officer in person, or by his Attorney or Vakeel, and to the Defendant by pre-paid post letter; after the receipt of which by the Defendant he shall not be entitled to any further costs than those incurred up to its receipt, unless the Judge shall otherwise order; and proof that the letter was duly posted shall be sufficient proof of the receipt thereof by the defendant, in the absence of evidence to the contrary.

LXX.

Effects of withdrawal.

If the notice be given to the officer at any time before the day mentioned in the summons, the Plaintiff shall be at liberty to bring a fresh suit for the same matter, unless precluded by the rules for the limitation of actions. If the notice be given on or subsequent to the day mentioned in the summons, the Plaintiff shall be precluded from bringing a fresh suit for the same matter, unless he shall have previously obtained the consent of the Defendant, or the permission of the Judge to withdraw the suit. It shall be competent to the Judge at any time before final judgment to grant such permission on what may appear to him sufficient grounds for so doing, and on such terms as to costs or otherwise as he may deem proper.

Of the Death, Marriage, and Bankruptcy or Insolvency of Parties.

LXXI.

Suit not to abate by death.

The death of a plaintiff or defendant shall not cause the suit to abate. A note of the death shall be entered on the register of the suit, and the suit may be continued as herein-after mentioned.

LXXII.

Proceedings in case of death of one or more of several plaintiffs or defendants.

If there be two or more plaintiffs or defendants, and one or more of them should die, and if the cause of action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.

LXXIII.

Proceeding in case of death of one or more of several plaintiffs,

If there be two or more plaintiffs, and one or more of them should die, and if the cause of action shall not survive, to the surviving plaintiff or plaintiffs alone, but shall accrue to them and the legal representative

or representatives of the deceased plaintiff or plaintiffs, the Court may, on the application of the legal representative or representatives of the deceased plaintiff or plaintiffs, enter the name or names of such representative or representatives in the register of the suit in the place or stead of such deceased plaintiff or plaintiffs, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such legal representative or representatives of the deceased plaintiff or plaintiffs; and if the application be made before the trial, and there be any dispute as to the fact of the person or persons so applying being the legal representative or representatives of the deceased plaintiff or plaintiffs, the truth thereof shall be tried thereat, together with the title of the deceased plaintiff or plaintiffs, and judgment shall be given in favour of or against the person or persons making such application, as if such person or persons were originally a plaintiff or plaintiffs. If no application shall be made to the Court by any person or persons claiming to be the legal representative or representatives of the deceased plaintiff or plaintiffs, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of the deceased plaintiff or plaintiffs to appear on a day to be fixed in such proclamation, and to proceed with the suit in his or their stead. If any person or persons shall appear on the day mentioned in the proclamation to proceed with the suit as the legal representative or representatives of the deceased plaintiff or plaintiffs, his or their name or names shall be entered in the register of the suit, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and such person or persons so appearing as the legal representative or representatives of the deceased plaintiff or plaintiffs; and if the appearance be made before the trial, and there be any dispute as to the fact of the person or persons so appearing being the legal representative or representatives of the deceased plaintiff or plaintiffs, the truth thereof shall be tried thereat, together with the title of the deceased plaintiff or plaintiffs, and judgment shall be given in favour of or against the person or persons so appearing, as if such person or persons were originally a plaintiff or plaintiffs. And if no person shall appear on the day to be fixed in the said proclamation, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs; and if judgment be given in favour of the defendant, the legal representative or representatives of the deceased plaintiff or plaintiffs shall be bound thereby equally with the surviving plaintiff or plaintiffs; but if judgment be given against the defendant or defendants, it shall only be to the extent of the share or shares of the surviving plaintiff or plaintiffs, and with a reservation of the rights of the legal representative or representatives of the deceased plaintiff or plaintiffs.

Where the right of action accrues to the survivor and the representative of the deceased.

LXXIV.

Proceeding in case of death of sole or sole surviving plaintiff.

In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the legal representative or representatives of such plaintiff, enter the name of such representative or representatives in the place or stead of such plaintiff in the register of the suit, and the suit shall thereupon proceed; and if such application be made before the trial, and the fact be disputed, the truth thereof shall be tried thereat with the title of the deceased plaintiff, and judgment shall be given in favour of or against the person or persons making the application, as if such person or persons were originally the plaintiff or plaintiffs. If no application shall be made to the Court within what it may consider a reasonable time by any person or persons claiming to be the legal representative or representatives of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent to the Court to pass an order that the suit shall abate, and to award the defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate or estates of the deceased sole plaintiff or surviving plaintiff, or if the Judge shall think proper he may, on the application of the defendant, and upon such terms as to costs as may seem fit, pass such other order for bringing in the legal representative or representatives of the deceased sole plaintiff or surviving plaintiff, and prosecuting the suit to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

LXXV.

Proceeding in case of death of one or more of several defendants, or of a sole or sole surviving defendant.

If there be two or more defendants, and one or more of them should die, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the clerk or other proper officer of the Court, with the following particulars distinctly written in the language in ordinary use in judicial proceedings before the Court, viz., the name, description, and place of abode of any person or persons whom he alleges to be the legal representative or representatives of such defendant or defendants, and whom he desires to be made the defendant or defendants in his or their stead, and the clerk or other proper officer of the Court shall thereupon enter the name of such representative or representatives in the register of the suit in the place or stead of such defendant or defendants, and shall issue a summons to him or them to appear on a day to be therein mentioned to defend the suit. If no application shall be made to the Court, the Court shall direct a proclamation to be issued and published in the manner prescribed in Articles XLI. and XLII., calling upon the legal representative or representatives of such defendant or defendants to appear on a day to be fixed in such proclamation, and defend the suit. If any person or persons shall appear on the day mentioned in the proclamation, to make defence to the suit, as the legal representative or representatives of the deceased, his or their name or names shall be entered in the register of the suit, in the stead of the deceased defendant or defendants, and the suit shall proceed in the same way as if such person or persons had been originally a defendant or defendants thereto. And if no person shall appear on the day to be fixed in the said proclamation, the Court may proceed to dispose of the cause in the manner provided in Article LXXXI., or may make such order as may appear to be just and proper in the circumstances of the case.

LXXVI.

Objections which are competent to the new defendant.

In all cases in which the legal representative or representatives of a deceased defendant or defendants shall be entered in the register, in the stead of such deceased defendant or defendants, if the issues shall not have been settled before the death, the new defendant or defendants shall be entitled to make all objections which would have been competent to the deceased defendant or defendants, and in addition thereto may make such other objections to the suit as may be appropriate to and rendered necessary by his or their character of legal representative; but if the issues shall have been settled before the death, the new defendant or defendants shall be at liberty to object only by way of denial, or to make such other objection only as may be appropriate to and rendered necessary by his or their character of legal representative, unless by the leave of the judge he or they shall be permitted to object fresh matters; and in case the plaintiff shall recover he shall be entitled to the like judgment in respect of the debt or sums sought to be recovered, and in respect of the costs prior to the entry of the name of the new defendant or defendants, as he would have been entitled to against the original defendant or defendants, and in respect of the costs subsequent thereto he shall be entitled to the like judgment as in an action originally commenced against the legal representative.

LXXVII.

Marriage of a female plaintiff or defendant not to abate the suit.

The marriage of a woman, plaintiff or defendant, shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and the decree thereupon may be executed upon the wife alone; and if the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with the permission of the Court, be issued, upon the application of the husband, where the husband is by law entitled to the money or thing which may be the subject of the decree; and if in any such suit the wife shall sue or defend by attorney or vakeel appointed by her when sole, such attorney or vakeel shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the attorney or vakeel changed by authority of the Court.

LXXVIII.

The bankruptcy or insolvency of the plaintiff in any suit which the assignees might maintain for the benefit of the creditors shall not be a valid objection to the continuance of such suit, unless the assignees shall decline to continue the suit, and give security for the costs thereof, within such reasonable time as the judge may order; but the proceedings may be stayed until such election is made; and in case the assignees neglect or refuse to continue the suit, and to give such security, within the time limited by the order, the defendant may, within eight days after such neglect or refusal, object bankruptcy or insolvency as a reason for abating the suit. Bankruptcy or insolvency when not to abate the suit.

Of Notices to produce, and how they are to be served.

LXXIX.

Whenever any of the parties to a suit is desirous that any document, writing, or other thing, which he supposes to be in the possession or power of another of the parties thereto, should be produced at any hearing of the cause, he shall at the earliest opportunity deliver to the Clerk or proper officer of the Court two notices in writing to the party in whose possession or power he supposes the document, writing, or other thing, to be, calling upon him to produce the document, writing, or other thing, on the day on which he wishes the same to be produced; and one of such notices shall be retained by the officer, and the other shall be delivered by him to the bailiff or proper officer, to be served in the manner herein-after mentioned: Two notices in writing to be delivered to the proper officer of the Court.

1. If the party on whom the notice is to be served shall have employed an Attorney or Vakeel to act for him in the cause, the notice shall be served on such Attorney or Vakeel by delivering the notice to him personally, or by leaving it at his office, or ordinary place of residence. How the notice is to be served.
2. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall have his place of abode within a radius of eight miles from the Court House, the notice shall be served on him by delivering it to him personally, or leaving it at his place of abode.
3. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall not have his place of abode within a radius of eight miles from the Court House, but shall have entered in the book, to be kept for that purpose by the proper officer, the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall be served by delivering the same to such person, or by leaving it at his place of abode.
4. If the party shall not have employed an Attorney or Vakeel to act for him in the cause, and shall neither have his own place of abode within a radius of eight miles from the Court House, nor shall have entered in the book to be kept for that purpose the name and place of abode of some person residing within such distance of the Court House on whom he may wish that all notices or process in the cause should be served on his behalf, the notice shall in like manner be served by delivering the same to the party in person or by leaving it at his place of abode; unless the notice be for some day subsequent to the first hearing of the cause, in which case it shall be sufficient service of the notice if it be fixed up in some conspicuous place in the office of the Clerk or proper officer of the Court, and also in some conspicuous place of the Court House.

Of the Appearance of the Parties, and Judgment by Default for Non-appearance.

LXXX.

On the day in that behalf mentioned in the summons, and from day to day, if necessary, until the cause is called on, the parties shall be in attendance at the Court-house in person or by an Attorney or Vakeel of the Parties must appear in person or by attorney.

Court duly empowered to represent them in all matters relating to the prosecution or defence of the action, as the case may be.

LXXXI.

Consequences of non-appearance of a sole Plaintiff or Defendant.

If, on the day fixed for the hearing of the cause, or any other day subsequent thereto, on which the cause may be called on, neither party appears, either in person or by an Attorney or Vakeel of the Court, when duly called upon by the proper officer of the Court, the cause shall be struck out, with liberty to the Plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions. If the Plaintiff shall appear in person or by Attorney or Vakeel and the Defendant shall not appear in person or by Attorney or Vakeel, and it shall be proved to the satisfaction of the Judge that the summons was duly served, or if the Defendant having appeared in person or by Attorney or Vakeel shall refuse to answer to the claim of the Plaintiff, then and in any of these cases the Judge shall pass judgment against him by default. And in like manner if the Defendant shall appear in person or by Attorney or Vakeel, and the Plaintiff shall not appear in person or by Attorney or Vakeel, or having appeared shall refuse to state his claim or to answer any questions respecting the same that the Judge may think proper to put to him, then and in any of these cases the Judge shall pass judgment against the Plaintiff by default.

LXXXII.

When there are several plaintiffs or defendants each may authorize the other to appear for him.

When there are two or more plaintiffs, any one or more of them may be authorized to appear, plead, and act for the other or others of them; and in like manner, when there are two or more defendants, any one or more of them may be authorized to appear, plead, and act for the other or others of them; provided that the authority shall in all cases be in writing, and shall be filed with the proper officer of the Court; when so filed it shall be as effectual to all intents and purposes as if the person so authorized to appear, plead, and act were a vakeel of the Court.

LXXXIII.

When such appearance may be made without special authority.

Nothing in the preceding Article contained shall be taken to prevent any one of two or more plaintiffs or defendants from appearing for the other or others of them respectively, without any special authority, when already entitled by law so to do by reason of unity of interest in the matter in dispute, or otherwise howsoever.

LXXXIV.

Consequence of non-appearance of one or more of several plaintiffs.

Consequence of non-appearance of one or more of several defendants.

If there are two or more plaintiffs, and one or more of them shall appear in person, or by attorney or vakeel, or by a co-plaintiff or co-plaintiffs duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by attorney or vakeel, or by a co-plaintiff or co-plaintiffs duly authorized or entitled as aforesaid, it shall be competent to the judge to proceed with the suit at the instance of the other plaintiff or plaintiffs who shall have appeared, in the same way as if all the plaintiffs had appeared, and to pass such order as may be just and proper in the circumstances of the case; and if there are two or more defendants, and one or more of them shall appear in person, or by attorney or vakeel, or by a co-defendant or co-defendants duly authorized or entitled as aforesaid, and the other or others of them shall not appear in person, or by attorney or vakeel, or by a co-defendant or co-defendants duly authorized or entitled as aforesaid, and if the plaintiff or plaintiffs shall consent to abandon the suit against the defendant or defendants who shall have appeared, and if judgment by default can be given against the defendant or defendants who shall not have appeared without detriment to the rights or interests of the other defendant or defendants, judgment may be given by default against the defendant or defendants who shall have so failed to appear, upon such terms as to the costs of the other defendant or defendants, or otherwise, as to the judge may seem proper; but if the plaintiff or plaintiffs shall not agree to abandon the suit against the defendant or defendants who shall have appeared, or if judgment cannot be given by default against the defendant or defendants who shall not have appeared, without detriment to the rights or interests of the defendant or defendants who shall have appeared, the judge

shall proceed with the cause to judgment, and shall at the time of passing his judgment give such order with respect to the defendant or defendants who shall not have appeared as shall be just and proper in the circumstances of the case.

LXXXV.

When and how judgment by default may be set aside.

In all cases of judgment against a Defendant by default, for non-appearance, he may apply, at any time before the same shall have been finally executed, to the Court by which the judgment was passed, for an order to set it aside; and if it shall be proved to the satisfaction of the Judge that the summons was not duly served, or that the Defendant was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment, and shall appoint a day for proceeding with the cause. And in like manner in all cases of judgment against a Plaintiff by default for non-appearance, he may apply, within a reasonable time, for an order to set aside the judgment; and if it shall be proved to the satisfaction of the Judge that the Plaintiff was prevented by any sufficient cause from appearing when the cause was called on for hearing, the Judge shall pass an order to set aside the judgment by default, and shall appoint a day for proceeding with the cause. In all cases whatsoever of judgment by default, in which a Judge shall pass an order for setting aside the judgment, his order shall be final; but in all cases in which he shall reject an application to set aside a judgment by default, an appeal shall lie from his order refusing the application, to the tribunal to which his final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

LXXXVI.

When the Defendant has not been summoned in sufficient time, the Plaintiff may apply for a new summons or bring fresh suit.

If it shall not be proved to the satisfaction of the Judge that the summons was duly served on the Defendant in sufficient time to enable him to appear in person or by Attorney or Vakeel on the day fixed for the hearing of the cause, the Judge shall, at the option of the Plaintiff, either postpone the cause to a future day, and grant him a second summons to the Defendant, to be served in like manner as aforesaid, in continuation of the existing suit, or permit him to withdraw his suit, and if he shall elect to withdraw his suit, he shall be at liberty to institute a fresh suit for the same matter against the Defendant in the same Court, or in any other Court of competent jurisdiction, at any time, unless precluded by the rules for the limitation of actions.

Of the Examination of the Parties.

LXXXVII.

Examination of the parties or their attorneys.

In all suits in which both the parties appear in person or by Attorney or Vakeel before the Judge, they or their Attorneys or Vakeels may be examined orally by the Judge, and it shall be incumbent on them respectively to answer such questions in regard to the suit as he may think proper to put to them.

LXXXVIII.

Consequence of refusal or inability of attorney to answer.

If any of the parties shall appear by an Attorney or Vakeel of the Court, and such Attorney or Vakeel shall refuse, or be unable to answer any material question relating to the case, which the Judge is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Judge shall postpone the hearing of the cause to a future day, and direct that the party whose Attorney or Vakeel may have refused, or been unable to answer as aforesaid, shall attend in person on such day, and shall pay the costs of the opposite party;—and if the party so directed to attend shall fail to appear in person on the day to be so appointed, the Judge may pass judgment against him, as in case of default, or give such other order in relation to the cause as he may deem proper in the circumstances of the case.

Of the Production of Documents.

LXXXIX.

Documentary evidence to be produced at first hearing.

The parties, or their attornies or vakeels, shall bring with them, and have in readiness at the first hearing of the cause, to be produced when called upon by the Court, all their documentary evidence of every description, and all documents, writings, or other things which may have been specified in any notice to produce which may have been served on them respectively within a reasonable time before the hearing of the cause; and no documentary evidence of any kind, which the parties or any of them may desire to produce, shall be received by the Court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the nonproduction of the document at the first hearing.

XC.

Exhibits may be admitted or rejected by the Court.

All exhibits produced by the parties shall be received and inspected by the Court; but it shall be competent to the Court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible.

XCI.

Unstamped documents may be received on payment of duty and penalty.

If the exhibit be a deed, instrument, or writing, chargeable with stamp-duty under the existing Regulations of the Madras [*Bombay*] Code, or Acts of the Council of India, it shall not be received in evidence if unstamped or not sufficiently stamped, until the whole or the deficiency (as the case may be) of the stamp duty and the penalty required by the existing Regulations of the Madras [*Bombay*] Code or Acts of the Council of India shall have been paid to the clerk or proper officer of the Court.

XCII.

Duty and penalty to be received by officer of Court.

Such officer shall, upon payment to him of the whole, or of the deficiency (as the case may be) of the stamp duty payable upon or in respect of such document, and of the penalty required by the Regulations of the Madras [*Bombay*] Code or Acts of the Council of India, give a receipt for the amount of the duty or deficiency which the judge shall determine to be payable, and also of the penalty; and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall at the end of every month duly make a return to the collector of revenue of the Zillah of the monies (if any) which he has so received by way of duty or penalty, distinguishing between such monies, and stating the number and title of the cause and the names of the parties from whom he received such monies, and the date, if any, and description of the document, for the purpose of identifying the same; and he shall pay over the said monies to the collector of revenue, or to such person as he may appoint or authorize to receive the same; and the collector of revenue, or other proper authority, shall, upon production of the receipt herein-before mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid.

XCIII.

How admitted exhibits are to be marked.

When an exhibit is received by the Court, and admitted in evidence, it shall be endorsed with the number and title of the suit, the name of the party producing it, and the date on which it was produced, and shall be filed as part of the record.

XCIV.

Rejected exhibits to be marked and returned.

When an exhibit is rejected by the Court, it shall be endorsed in the manner specified in the last preceding article, with the addition of the word "rejected," and the endorsement shall be subscribed by the Judge. The exhibit shall then be returned to the party who produced it, unless the Court shall think proper, for special reasons, to reclaim it; and in all cases in which a rejected exhibit is returned a certified copy of the exhibit and the endorsement shall be kept by the Court.

XCV.

When the time for appealing has elapsed, or in case the suit has been appealed, then after the appeal has been finally disposed of, either party shall be entitled, on application to the Court in which the exhibit may be, to receive back any document produced by him in the suit, unless the further use of such exhibit has been superseded by the terms of the decree, or the Court has directed it to be detained for purposes of public justice, as on suspicion of forgery.

When exhibit admitted in evidence may be returned.

XCVI.

Any exhibit may be returned before the time mentioned in the last preceding Article, if the Judge of the Court in which the document may happen to be shall think proper, for special reasons, to order its return.

May be returned sooner, for special reasons.

XCVII.

In all cases in which a document once received by a Court of Justice and admitted in evidence is restored, a copy, properly certified, shall be substituted for it in the record of the suit, and a receipt shall be given by the party receiving it in a separate receipt book kept for the purpose.

Certified copy of returned exhibits to be kept.

XCVIII.

Any Civil Court may of its own accord, or upon the application of any of the parties to a suit, send for, either from its own records or from any other public office or Court, the record of any other suit or case, and inspect the same, when the inspection of such record or any part of it shall appear likely to elucidate the facts of the suit before the Court, and to promote the ends of justice.

Court may send for papers from its own records or from other public offices or Courts.

Of the Settlement of Issues.

XCIX.

If in the course of the oral examination of the parties or their Attorneys or Vakeels it shall appear that they are not at issue upon any question of law or fact, the Court may at once give judgment; and if it shall appear that they are at issue on some question of law or fact, the Judge after he shall have satisfied himself by such oral examination of the parties or their Attorneys or Vakeels, on what questions of law or fact they are really at issue, will proceed to frame and record the issues of law and fact on which the right decision of the case may appear to him to depend.

Framing of issues.

C.

For the purpose of assisting the Judge in framing the issues, the parties or their Attorneys or Vakeels may tender at the first hearing of the cause written statements of their respective cases, which statements the Judge shall receive and peruse, and put on the record; but he may, nevertheless, frame the issues from the allegations of fact which he collects from the oral examinations, notwithstanding any difference between such allegations of fact, and the allegations of fact contained in the written statements so tendered by the parties or their Attorneys or Vakeels.

Written statements may be tendered by the parties to assist the judge at the first hearing of the cause.

CI.

No such written statement shall be received after the first hearing of the cause, unless called for by the Judge under the power herein-after contained.

No statement to be taken thereafter unless called for by the Judge.

CII.

It shall be competent to the Judge, at any time before final judgment, to call for a written statement, or an additional written statement, from any of the parties, for the purpose of assisting him to frame or amend the issues.

Judge may at any time call for a written statement.

CIII.

Written statements shall be as brief as the nature of the case will admit, and shall not be argumentative, nor by way of answer one to the other; but each statement shall be confined, as much as possible, to a simple narra-

How written statements are to be framed.

tive of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove if called upon by the Court.

CIV.

Judge may reject an improper statement,

If it shall appear to the Court that any written statement presented by or on behalf of a party, whether the same have been spontaneously tendered or have been called for by the Court, is argumentative or unnecessarily prolix, or that it contains matter irrelevant to the suit, the Judge may reject the same; and it shall not be competent to a party whose written statement has been rejected for any of these causes, to present another written statement, unless it shall be expressly called for by the Court. If the Judge think proper, he may, instead of absolutely rejecting the written statement, receive and record the same, after he shall have struck out all such parts of the written statement as he may consider to be argumentative, unnecessary, or irrelevant; and such parts of any written statement as may be so struck out by the Judge shall be disallowed upon any taxation of costs as between party and party. It shall also be competent to the Judge to impose upon the party from whose written statement he shall see fit to strike out any part, as being argumentative, unnecessary, or irrelevant, a fine not exceeding fifty rupees.

or expunge irrelevant matter,

and fine party presenting it.

CV.

Judge may call for a person whom he thinks it proper to examine before framing the issues.

If the Judge shall be of opinion that the issues cannot be correctly framed without the examination of some person other than the persons already before the Court, or without the reading of some document not produced by any of such persons, he may adjourn the framing of the issues to a future day, and may compel the attendance of such person, or the production of the document by the person in whose hands it may be, by subpœna or other suitable process.

CVI.

Amendment of issues.

At any time before the decision of the case, the Judge may amend the issues on such terms as to him shall seem fit, and all such amendments as may be necessary for the purpose of determining the real question or controversy between the parties shall be so made.

CVII.

Appeal.

If either party is dissatisfied with the issues as finally framed by the Court, such party may appeal upon that ground after the decision of the case.

Of Issues by Agreement of Parties.

CVIII.

Questions of fact, or of law or equity may be stated by the parties in the form of an issue. and an agreement may be entered into for the payment of a sum of money, or the doing or the refraining to do a particular act, according to the result of the issue.

When the parties to a suit are agreed as to the question or questions of fact, or of law or equity, to be decided between them, they may, at any time after the issue of the summons, state the same in the form of an issue, and enter into an agreement in writing, which shall not be subject to any stamp duty, that upon the finding of the Judge in the affirmative or the negative of such issue a sum of money fixed by the parties, or to be ascertained by the Judge upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, or that some property specified in the agreement, and in dispute in the suit, shall be delivered by one of the parties to the other of them, or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts, specified in the agreement, and having reference to the matter in dispute, either with or without the costs of the suit.

CIX.

The judge, if satisfied that the agreement was executed *bonâ fide* may decree accordingly.

If the Judge shall be satisfied, after an examination of the parties, their Attorneys or Vakeels, or taking such evidence as he may deem proper, that the agreement was duly executed by the parties, and that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried or decided, he may proceed to record and try the same, and

deliver his finding or opinion thereon in the same manner as if the issue had been framed by himself in an ordinary suit, and may upon his finding or deciding in such issue, give judgment for the sum so fixed by the parties or so ascertained as aforesaid, or otherwise according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

When the Suit may be disposed of at the First Hearing.

CX.

If the Court shall be satisfied that the questions of law or fact on which the parties are at issue do not require any further argument or proof than such as the parties or their Attorneys or Vakeels can at once supply, the Court may at once decide such question, if the summons have been issued for a final disposal of the cause; and if the summons have been issued for a settlement of issues only, the Court may in like manner at once decide the question, if the parties consent thereto.

If the summons was for a final disposal of the case, or the parties consent, suit may be decided at first hearing;

CXI.

When the summons has been issued for the settlement of issues only, if the parties or either of them do not consent that the Court shall at once decide the questions of law or fact on which they may be at issue, or if the questions of law or fact on which they are at issue require further argument or proof than the parties or their Attorneys or Vakeels can at once supply, the Judge shall postpone the further hearing of the cause, and shall fix a day for the production of further evidence, or for further argument, as the case may require.

otherwise, the hearing of the case to be postponed.

Of Adjournments.

CXII.

The Judge may, at any stage of the suit, grant time to the parties, or either of them, and may from time to time adjourn the hearing of the cause as he may think fit; and in all such cases the party applying for time shall pay the costs occasioned by such adjournment, unless the Judge shall otherwise direct.

Judge may grant time, or adjourn to a future day.

CXIII.

If on any day to which the hearing of the cause may be adjourned, the parties or either of them shall not appear in person or by Attorney, or Vakeel, the Court may proceed to dispose of the cause in the manner specified in Article LXXXI. or Article LXXXIV., as the case may be, or may make such other order as may appear to be just and proper in the circumstances of the case.

How the Judge is to proceed if the parties fail to appear on the day fixed.

Of Summoning Witnesses.

CXIV.

The parties or their Attorneys or Vakeels may at any time obtain, on application to the Clerk or other proper officer of Court, summonses to witnesses or other persons, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in such summons any number of names may be inserted.

Application for Summons.

CXV.

The person applying for a summons shall pay to the Clerk or proper officer of the Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness, or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had, in fixing the scale of such expenses, to

Expenses of witnesses to be paid before issue of summons.

the rules, if any, established by the Court to which such Court shall be immediately subordinate. The sum so paid to the officer shall be tendered to the witness or other person, at the time of serving the summons, if it can be served personally. In addition to the sum so paid, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary to defray his travelling and other expenses, and also the expenses of his detention under the summons, and in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, and the witness or other person summoned shall not be bound to give evidence, or produce any document until such sum shall be paid.

CXVI.

Time and place of attendance to be specified in summons.

Every summons for the attendance of any witness or other person, shall specify the time and place at which he is required to attend, and also the purpose for which his attendance is required; and any particular document or documents which the witness or other person may be called on to produce shall be described in the summons with convenient certainty. The witness shall further be required to produce all deeds and documents in his possession relating to the subject of the suit, and shall be bound to produce them unless he shall satisfy the Judge that the notice to produce did not give him sufficient information.

CXVII.

Summons to produce a document or to assist in framing issues.

Any person, whether a party to a suit or not, may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced, instead of attending personally to produce the same.

Service of Summons on a Witness.

CXVIII.

How the summons shall be served.

Every summons shall be served by exhibiting the original, and delivering or tendering a copy; and the service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

CXIX.

Service to be on the witness, or a member of his family.

Whenever it may be practicable, the service of the summons shall in all cases be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult member of his family residing with him.

CXX.

When the summons cannot be served it is to be returned to the Court.

When the person required to attend cannot be found, and there is no adult member of his family on whom the summons can be served, the serving officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it.

CXXI.

Time and manner of service to be endorsed on the summons.

The serving officer shall in all cases in which the summons has been served endorse on the original summons the time and the manner where and how it was served.

CXXII.

How a summons on a witness who resides in another jurisdiction is to be served.

If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the clerk or proper officer of the Court in which the suit is pending, to the clerk or proper officer of the Court within whose jurisdiction the person required to attend may reside; and the clerk or proper officer of the last-mentioned Court shall, upon receipt thereof, deliver the same to the bailiff or other proper officer of his own Court, to be served in the manner above

directed; and upon the return of the summons by the serving officer, it shall be transmitted to the Clerk or proper officer of the Court from whence it originally issued.

CXXIII.

If any person for whose attendance, either to give evidence or to produce a document, a summons shall be issued, cannot be served in either of the ways herein-before specified, the Court on being certified thereof by the return of the serving officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness absconds or keeps out of the way, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon or near to his house or place of abode; and if such person shall not attend at the time and place to be named in such proclamation, his property (real and personal), to such amount as the Court shall deem reasonable, (but subject to the same limitation as to the articles exempt from attachment, as in case of attachment for arrears of rent,) shall be liable, under an order of the Court, to attachment and sale.

When a witness absconds his property may be attached.

CXXIV.

The cost of the attachment shall be borne in the first instance by the party applying for it, and the Court issuing the summons and attachment shall not proceed to sale of the property if the witness shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not notice of the proclamation in time to attend at the time and place named therein. Upon the appearance of such witness the Court shall make such order in regard to the costs of the attachment as it shall deem fit. If the witness appearing shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of a summons, and that he had not such a notice of the proclamation as aforesaid, it shall be in the discretion of the Court to order the property attached, or any part thereof, to be forfeited and sold for the purpose of satisfying all costs incurred in consequence of such default, or absconding or keeping out of the way, and any fine which the Court may deem fit to impose upon the witness under the provisions of Article CCIX., or the Court may order the property to be released from the attachment upon payment of such costs and fine as aforesaid.

How the Court is to proceed with the witness on his appearance.

Of the Examination of Parties as Witnesses.

CXXV.

When a party to a suit appears in person at any hearing of the cause, he may be examined as a witness either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto.

Parties may be examined.

CXXVI.

If any party to the suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his Attorney or Vakeel, make a special application to the Court for an order that the party do attend, and shall show, to the satisfaction of the Court, sufficient grounds in support of such application, otherwise a summons shall not be issued.

Special application to be made for the examination of a party as a witness.

CXXVII.

The Court, if it think fit so to do, may, before making such order, cause notice to be given to the party or his Attorney or Vakeel, fixing a day for such party to show cause why he should not attend and give evidence; and may also, from time to time, if necessary, for good and sufficient cause, enlarge the time for such application.

The Court may first issue a notice to show cause.

CXXVIII.

In support of the cause shown, the Court shall receive any declaration in writing of the party, if signed by him and delivered into the Court by himself or his Attorney or Vakeel.

May receive a written declaration in support of the cause shown.

CXXIX.

If no sufficient cause be shown, summons to issue

If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence.

Attendance of Witnesses, and Consequence of Non-attendance.

CXXX.

Persons summoned to give evidence must attend.

Any person who shall be summoned to appear and give evidence in a cause shall be bound to attend at the time and place named for that purpose.

CXXXI.

Consequences of non-attendance by a witness not a party to the suit.

If any witness, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Article CXIX., shall, without lawful excuse, fail to comply with such summons, the Court may issue an order to the bailiff or other proper officer to apprehend and bring the witness before the Court. If any such person abscond or keep out of the way, so that he cannot be seized or brought before the Court, his property shall be liable to attachment and sale in the same manner as is provided in Article CXXIII. with respect to a witness on whom the service of a summons cannot be effected.

CXXXII.

Consequences of refusal to give evidence.

If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition as herein-after required, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall, in the meantime, consent to give his evidence, or to sign his deposition, or to produce the document; after which, in the event of his persisting in his refusal, the Court may proceed to deal with him according to the provisions of Article CCIX.

CXXXIII.

Consequence of non-attendance or refusal of a party.

If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, fail to comply with such order, or attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to subscribe his deposition, or to produce any document in his custody or possession, named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, as in case of default, or give such other order in relation to the cause as the Court may deem proper in the circumstances of the case.

CXXXIV.

Any person present in Court may be called upon to give evidence though not summoned.

Any person present in Court, whether a party or not, may be called upon by the Court to give evidence and to produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be dealt with for any refusal to obey the order of the Court.

When and how Witnesses are to be examined.

CXXXV.

Witnesses must be examined at the hearing of the cause in open Court in the presence of the Judge.

On the day appointed for the hearing or trial of the cause, or on some other day to which the hearing or trial may be adjourned, the evidence of the attending witnesses shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal may lie to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, by or in

the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over to the witness, and signed by him in the presence of the Judge and of the parties to the suit, or their Attorneys or Vakeels. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be in the discretion of the Judge to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his Attorney or Vakeel shall require it. If any question put to a witness be objected to by either of the parties, or their Attorneys or Vakeels, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of the witness while under examination. In cases where an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length; but the Judge shall make a short memorandum of the substance of what each witness may have deposed at the trial of the cause, and such memorandum shall be written and signed with his own hand, and shall form part of the record.

CXXXVI.

If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown to the satisfaction of the Court why his examination should be taken immediately, it shall be competent to the Court, upon the application of either party, at any time after summons issued, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the other party if the day be fixed in his absence. The witness shall be examined, and his deposition shall be taken down in writing in the manner herein-after prescribed; and the deposition so taken down may be read in evidence at the trial, or any hearing of the cause.

But a witness may for special cause be examined immediately.

CXXXVII.

All witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their giving evidence, and they shall, upon such examination, be found to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Witnesses to be examined without oath, affirmation, or warning.

Of Commissions to examine absent Witnesses and make local Inquiries.

CXXXVIII.

When the evidence of a witness is required who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Judge to be personally examined, or is a person exempted by law absolutely, or at the discretion of the Court, by reason of rank, sex, or other special cause, from personal appearance in Court, the Court may, on the application of any of the parties to the suit, order a Commission to issue for the examination of the witness on interrogatories or otherwise, and may, by the same or any subsequent order or orders, give all such directions for taking such examinations, as well within the jurisdiction of the Court wherein the suit shall be pending as without, as may appear reasonable and just. If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any officer of the Court, or to any subordinate Court, or to any other person or persons whom the Judge may think proper to appoint. If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the local jurisdiction of the High Court, but within its general jurisdiction, the Commission shall ordinarily be issued to the Court within whose particular jurisdiction the witness may reside, or which can most conveniently execute the same; but under special

Cases in which Court may issue a Commission to examine witnesses.

Where the witness is within the Court's jurisdiction.

Where the witness is beyond the Court's jurisdiction.

circumstances, which may appear to render a different course expedient, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint.

CXXXIX.

Where the witness is within the local jurisdiction of the High Court.

If the witness be resident within the local jurisdiction of the High Court, the Commission shall ordinarily be issued to the Court of Small Causes at Madras [*Bombay*], but may, under special circumstances, be directed to any other person or persons whom the Court issuing the Commission may think proper to appoint.

CXL.

Where the witness is beyond the general jurisdiction of the High Court.

Where the evidence is required of a witness who is resident at some place beyond the general jurisdiction of the High Court, the application for a Commission to examine the witness must in all cases be made to the High Court. If the suit in which the evidence of the witness is required be pending in some other Court than the High Court, the application must be accompanied by a certificate from the Court in which the suit is pending, that the application is made with its permission. In all cases of an application to the High Court for a Commission to examine a witness, the Commission may be issued to any person or persons whom the High Court may think proper to appoint; and whenever a Commission is issued from the High Court for the examination of a witness in a suit pending in any other Court the Commission shall be made returnable to the Court in which the suit is pending.

CXLI.

Commission to be returned with the depositions of the witnesses.

After the Commission has been duly executed, it shall be returned, together with the deposition or depositions of the witness or witnesses who may have been examined thereunder, to the Court out of which the Commission issued (except as in the last preceding article mentioned), unless otherwise directed by the order for issuing the Commission, and then it shall be returned in terms of such order, and it shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by law absolutely, or at the discretion of the Court, from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the Court, at its discretion, to authorize the reading of the deposition. And all depositions taken under any Commission which may be issued as aforesaid, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.

When depositions may be read in evidence.

CXLII.

Commission for local investigations.

In suits regarding lands or houses, or their limits or boundaries, in which the Court may deem a local investigation to be requisite or proper, for the purpose of elucidating the matters in dispute, the Court may issue a Commission to any person whom it may think proper to appoint, directing him to make such investigation, and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine, not only such witnesses as may be produced to him by the parties or any of them, but any other person or persons whom he may think proper to call upon to give evidence in the matters referred to him; and persons not attending on the requisition of the Commissioner, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the Commissioner during the investigation of the matters committed to him, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the Commissioner, as they would incur for the same offences in suits tried before the Court; provided that the Commissioner shall report

the order to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order. The Commissioner shall, after such local inspection as he may deem necessary, and after reducing to writing, in the manner herein-before prescribed for taking the depositions of witnesses in the presence of the Judge, the depositions of such witnesses as he may have examined, shall return the depositions, together with his report in writing, subscribed with his name, to the Court issuing the Commission. The report and depositions shall be taken as evidence in the cause, and shall form part of the record; but it shall be competent to the Court, or to the parties or any of them with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him, or mentioned in his report, or the manner in which he may have conducted the investigation. The Court may order such sum to be paid to the Commissioner as may be thought reasonable for his trouble and expenses, and the sum so ordered to be paid shall be considered as costs in the cause, unless the Court shall otherwise direct.

The report of the Commissioner to be taken as evidence in the cause; but he may be examined in person.

CXLIII.

In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Judge to appoint any person whom he may think proper to be a Commissioner, for the purpose of making such investigation or adjustment, and to direct that the parties or their attornies or vakeels shall attend upon the Commissioner during such investigation or adjustment. In all such cases the Judge shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance; and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioner are to be received in evidence in the case, unless the Judge may have reason to be dissatisfied with them, in which case he will make such further inquiry as may be requisite, and will pass such ultimate judgment or order as may appear to him to be right and proper in the circumstances of the case.

A commissioner may be appointed to investigate and adjust accounts.

Of Judgment and Decree.

CXLIV.

When the exhibits have been perused and considered, and the witnesses examined, and the parties have been heard in person, or by their respective Advocates, Attorneys, or Vakeels, the Court shall pronounce its judgment, either immediately or on some future day, of which due notice shall be given to the parties or their Attorneys or Vakeels.

When judgment is to be pronounced.

CXLV.

In any suit concerning the succession or right of inheritance to any zemindary, talook, land, house, or other real property, where more persons than one would, by the Hindoo or Mahomedan Law, be entitled to a portion of the estate, the decree shall adjudge the property, as far as may be practicable, among all the heirs in the proportions to which they may be respectively entitled.

Rights of all the heirs to be declared in cases of succession.

CXLVI.

In all suits in which issues have been framed the Judge shall state his finding or decision on each separate issue.

The Judge to state his decision on each issue;

CXLVII.

The judgment shall in all cases direct by whom the costs of each party are to be paid, whether by himself or by another party, and whether in whole or in what part or proportion; and the Judge shall have full power to award and apportion costs, in any manner he may deem proper, except in so far as is herein otherwise provided.

and to direct by whom costs are to be paid.

CXLVIII.

Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the suit, and in enforcing the

What is included in costs.

decree that may have been passed therein, such as the expense of summoning the Defendants, fees of Advocates, Attorneys, or Vakeels, or officers of court, and subsistence money to peons or other persons employed in serving processes, charges of witnesses, and sums awarded to commissioners either in taking evidence or in local investigations.

CXLIX.

How the judgment is to be delivered.

The judgment shall be pronounced in open Court, and in all Courts except the High Court it shall be imperative on the Judge to state the reasons for his judgment at the time of pronouncing the same. The judgment shall in all cases be written out and signed by the Judge. The judgment shall be written out in the vernacular language of the Judge, except when the Judge, being a native of the country, and sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, may prefer to write his judgment in English, and in that case the judgment may be written out in the English language. Whenever the judgment is written out in any other language than that which is in ordinary use in the proceedings before the Court, the judgment shall be translated into such language so being in ordinary use in the Court, and the translation shall also be signed by the Judge.

CL.

What the decree is to contain.

The decree shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the Register of the suit, the title of every exhibit produced in the cause, and the names of any witnesses who may have been examined, and a distinct statement of the issues when any may have been framed. It shall also contain an exact copy of the ordering part of the judgment or a translation thereof in the language in ordinary use in proceedings before the Court, and shall be sealed with the seal of the Court and signed by the Judge.

CLI.

Copies of the decree to be furnished gratuitously.

Copies of the decree shall be furnished gratuitously to the parties or their Attorneys or Vakeels, on application to the Clerk or other proper officer of the Court.

CLII.

When a native officer or soldier is a party to the suit, a copy of the decree is to be sent to his commanding officer.

When a native officer or soldier in the service of the Government is a party to a suit, and is not present at the time of its decision, an authenticated copy of the decree shall be transmitted by the Court to the commanding officer of the corps or detachment to which such native officer or soldier shall belong, for the purpose of its being communicated to him.

CHAPTER III.

Execution or Enforcement of Decrees.

CLIII.

How decrees are to be enforced.

If the decree be for land or other immoveable property, the same shall be delivered over to the party to whom the same may have been adjudged; if the decree be for any specific moveable, or for the specific performance of any contract, or for the performance of any other particular act, it shall be enforced by imprisonment of the party adjudged to perform the same, or by attaching his or their property, and keeping the same under sequestration until further order of the Court, or by both imprisonment and sequestration, if necessary; if the decree be for money, it shall be enforced by the imprisonment of the party against whom the same may have been adjudged, or the attachment and sale of his property, or by both if necessary; and if such party be other than a defendant, the decree may be enforced against him in the same manner as a decree may be enforced under the provisions of this Chapter against a defendant.

Application for Execution.

CLIV.

The application for execution of a decree shall be made to the clerk or other proper officer of the Court by the applicant in person, or through his Attorney or Vakeel in the cause, or some other Attorney or Vakeel duly appointed to act for him in that behalf, in manner herein-before mentioned.

Application for execution how to be made.

CLV.

If any person in whose favour a decree has been passed shall die or become bankrupt or insolvent after such decree, and before execution shall be fully had thereon, application for execution of the decree may be made by or on behalf of the legal representative or representatives, or the assignee or assignees, of the person so dying or becoming bankrupt or insolvent as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly. And, in like manner, if any person against whom a decree has been passed shall die after such decree, and before execution has been fully had thereon, application for execution thereof may be made against the legal representative or representatives or the estate of the person so dying as aforesaid, and if the Court shall think proper to grant such application, the decree may be executed accordingly.

If the person by or against whom the decree has been obtained shall die or become bankrupt or insolvent, application for execution may be made by or against his legal representative.

CLVI.

The application for execution of a decree shall be accompanied with the following particulars distinctly written in the language in ordinary use in proceedings before the Court, viz., the number of the suit, the names of the parties, the date of the decree, whether any appeal has been preferred from the decree, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; the amount of the debt or damages due upon it, if the suit were for money; the amount of costs, if any were awarded; the name of the person or persons against whom the enforcement of the decree is sought; and the mode in which the assistance of the Court is required, whether by the delivery of the property specifically decreed, the arrest and imprisonment of the person or persons named, or attachment of his or their property.

Particulars to be given with the application.

CLVII.

When the application is for an attachment of the defendant's land or other immoveable property, it shall also be accompanied with an inventory or list of such property, containing such a description of each item thereof as may be sufficient to identify it, together with a specification of the defendant's share or interest therein, to the best of the applicant's belief, and so far as he has been able to ascertain the same. And where the property is an estate paying revenue to government, or any portion of such estate, the application for an attachment shall be accompanied with an authenticated extract from the register of the collector's office, specifying the jummah of such estate, and the names and shares of the registered proprietors.

Further particulars when the application is for an attachment of immoveable property.

CLVIII.

Where the application is for an attachment of the defendant's moveable estate, or any part thereof, or of debts or money belonging to him, it may also be accompanied with an inventory or list of the property to be attached, containing a reasonably accurate description of each item thereof; or the plaintiff may apply for a general attachment of the defendant's moveable estate, debts, and money wheresoever the same can be found, to the amount of the judgment and costs.

The application for an attachment of moveable property may be special or general.

CLIX.

The Clerk or other proper officer of the Court, on receiving any application for execution of a decree, accompanied with the particulars above mentioned, or such of them as may be applicable to the case, shall compare the same with the original decree contained in the record of the cause; and if they shall be found to correspond therewith, shall enter a note of the application, and the date on which it was made in the register of the suit. If the par-

Duty of the officer on receiving the application.

ticulars shall not be found to correspond with the original decree, the Clerk or other proper officer shall either return them for correction to the person making the application, or shall, with the consent of such person, make the necessary correction himself.

Measures required in certain Cases preliminary to the Issue of the Warrant.

CLX.

In certain special cases, the defendant may be called on to show cause.

If an interval of more than one year shall have elapsed between the date of the decree and the application for its execution, or if the enforcement of the decree be solicited by or against individuals being heirs or representatives of the original parties in the suit, or against one only of several individuals equally affected by the decree, or if it shall appear that the matter in dispute has been adjusted by the parties subsequently to the decree, either by the voluntary surrender of the thing or property adjudged, or by the payment of the sum decreed, either in whole or in part, or by giving security for the same, or entering into an instalment bond or otherwise, or where the decree is for the delivery of a specific moveable, or for the specific performance of a contract or any other particular act, and the application is for the enforcement thereof by imprisonment of the party adjudged to deliver or perform the same, the clerk or other proper officer of the Court shall, instead of proceeding to the immediate enforcement of the decree, submit the application for execution thereof to the Judge; and it shall be competent to the Judge, if he shall think proper, to issue a notice to the party against whom execution may be sued for, requiring him to show cause, within a limited period to be fixed by the Court, why the decree should not be executed against him. If upon such notice the party shall not attend in person or by attorney or vakeel, or shall not show sufficient cause to the satisfaction of the Court why the decree should not be forthwith executed, the Court shall order it to be executed accordingly. If the party shall attend in person or by attorney or vakeel, and shall offer any objection to the enforcement of the decree, the Court shall issue such order as in the circumstances of the case may appear to be just and proper.

CLXI.

Application for a general attachment of moveable property must be referred to the judge.

Where the application is for a general attachment of the moveable estate of the defendant, the clerk or other proper officer of the Court shall submit the application to the judge, and it shall be competent to the judge, if he shall think proper, (and if the plaintiff shall in person, or by his agent, give security to the satisfaction of the Court, in such sum as may be considered adequate, for any injury that may be occasioned by the attachment of property belonging to any other person or persons than the defendant,) to direct that an order do issue for the attachment of the defendant's moveable property wherever the same may be found, to the amount of the judgment and costs, or such other sum as may be specified in such order.

CLXII.

The judge may summon and examine the defendant as to his means of payment.

Before granting the order for a general attachment, or upon the application of the plaintiff at any time after judgment and before complete execution of the decree, the judge may summon the defendant, and examine him as to his property and his means of satisfying the judgment, in the same way as if he were not a party to the suit.

CLXIII.

If the judgment be by default and for land, a proclamation for claimants to be issued before execution.

If the decree be for a zemindary, talook, land, house, or other real estate or property, or any share therein, and the judgment shall have been passed against the defendant or defendants by default, the clerk or other proper officer of the Court, before proceeding to execute the decree, shall issue a proclamation calling upon all persons having any claim to the property in question to appear on a certain day, to be specified in the proclamation, and which shall not be later than fifteen days from the date of the application for the execution of the decree, either in person or by an attorney or vakeel, and be prepared to state their claims to the Court, and support them by sufficient evidence.

CLXIV.

The proclamation shall be read aloud by the bailiff or other proper officer in some public place within the limits of or adjacent to the zemindary, talook, land, house, or other real estate, or property, for which, or a share in which, the judgment by default may have been given, and a copy thereof shall be fixed up in some conspicuous part of the Court House; and if the judgment by default shall have been given by any Court subordinate to the Zillah Judge, a copy of the proclamation shall also be fixed up in the Court of the Zillah Judge, as well as in the Court of the particular Judge in whose Court the judgment may have been given.

How the proclamation is to be published.

CLXV.

If no claimant to the property shall appear on the day fixed in the proclamation, either in person or by attorney or vakeel, to offer any objection to the execution of the decree, the Court shall order the decree to be executed in the same manner as if the judgment had not been given by default.

If no claimant appear, execution to issue.

CLXVI.

If on the day fixed in the proclamation, any claimant to the property shall appear, in person or by attorney or vakeel, and shall offer any objection to the enforcement of the decree, the Court shall proceed forthwith to investigate the same, in the like manner and with the like powers as if the claimant had been originally made a defendant to the suit, but shall restrict its inquiry to the fact of possession only; and if it shall appear to the satisfaction of the Court, that the zemindary, talook, land, house, or other estate or property mentioned in the decree was not in the possession of the party against whom the judgment by default may have been given, nor in the occupancy of ryots, or cultivators, or other persons, paying rent to him at the date of the commencement of the suit, the Judge shall pass an order to stay execution of the decree, and shall call upon the party applying for execution thereof to show cause why the judgment should not be set aside and cancelled. And if the party shall fail to show such cause to the satisfaction of the Court, the Court shall forthwith cancel the said judgment, and an entry of the cancellation shall be made in the Register of the suit. If it shall appear to the satisfaction of the Court that the zemindary, talook, land, house, or other estate or property mentioned in the decree, was in the possession of the party against whom the judgment by default was given, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the date of the commencement of the suit, it shall direct the decree to be executed in the same way as if the judgment had not been by default. The decision of the Court in the investigation mentioned in this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Investigation of claims, how to be made.

Issue of the Warrant.

CLXVII.

When the clerk or other proper officer of the Court is satisfied as to the particulars above referred to, and all necessary preliminary measures have been taken when any such are required, he shall forthwith prepare and issue, under the seal of the Court, the proper warrants for the execution of the decree.

Warrant to be under seal of Court.

CLXVIII.

Every warrant for execution of decree shall bear date on the day on which the same shall be issued, and shall be sealed with the seal of the Court, and delivered to the bailiff or other proper officer. A day shall be specified at the bottom of the warrant on or before which it must be executed, and the bailiff or other proper officer shall in all cases indorse upon the order the day and the manner in which it was executed, and shall return it with such indorsement to the Court from which it issued.

Latest day of execution to be written in warrant, and time and manner of execution to be indorsed.

Of the Execution of Decrees for Immoveable Property.

CLXIX.

How immoveable property is to be delivered when not in the occupancy of ryots.

If the decree be for a house or other immoveable property not in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by putting the party to whom the house or other immoveable property may have been adjudged, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

CLXX.

How it is to be delivered when in the occupancy of ryots.

If the decree be for land or other immoveable property in the occupancy of ryots or other persons entitled to occupy the same, delivery thereof shall be made by erecting a pole upon some place within or adjacent to the land or other immoveable property, and proclaiming to the occupants of the property by beat of drum, at some convenient place or places, the substance of the decree in regard to the property.

CLXXI.

Obstruction to execution of decree for land.

Defendant may be summoned if suspected of implication.

If the decree shall be for the possession of a zemindary, talook, land, house, or other real estate or property, or share therein, and the party or parties in whose favour the same shall have been adjudged shall be resisted or obstructed by any person or persons in obtaining effectual possession thereof, and shall make an application to the Court, either in person or by attorney or vakeel, at any time within one month from the date of the officer's return to the warrant for execution of the decree, the Court shall fix a day for investigating into the matter of his complaint, and if reasonable ground shall be shown to the satisfaction of the Court for believing that the obstruction or resistance in question has been occasioned by the defendant or defendants, or by some other person or persons at his or their instigation, the Court shall issue a summons to the defendant or defendants calling upon him or them to appear, on the day appointed for the investigation, to attend and give evidence.

CLXXII.

Court how to proceed if he cannot be found or fails to attend.

In all cases in which a summons shall be issued for the attendance of a party at any time or for any purpose after judgment, the summons shall be served in the manner herein-before prescribed for the service of a summons upon a witness, and if he cannot be served in either of the ways specified in Article CXIX., or if after being served he shall, without lawful excuse, fail to comply with such summons, or attending, or being present in Court, shall, without lawful excuse, refuse to give evidence, he shall be liable to be dealt with in the same way as if he were not a party to the suit, and as any other person would be dealt with in the like circumstances, under Articles CXXIII., CXXXI., and CXXXII. respectively.

CLXXIII.

How defendant may be dealt with if he persists in obstructing the plaintiff.

If the Court shall be satisfied, after such investigation of the facts of the case as it may deem proper, that the resistance or obstruction complained of was caused or occasioned by the defendant or defendants, or by any other person or persons at his or their instigation, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property adjudged to him by the decree, by the defendant or defendants, or some person or persons at his or their instigation, the Court may, without prejudice to the operation of the provisions of Article CCIX., commit the defendant or defendants to close custody until further orders.

CLXXIV.

Obstruction by a *bonâ fide* claimant.

If it shall appear to the satisfaction of the Court that the resistance or obstruction to the execution of the decree has been occasioned by any person or persons claiming *bonâ fide* to be in possession of the estate or property on his own account, or on account of some other person or persons than the defendant or defendants to the suit, the Court shall, without prejudice to the operation of the provisions of Article CCIX., proceed to investigate the claim in the same manner and with the like powers as if the claimant had been made originally a defendant to the suit, and shall pass such order for staying

execution of the decree, or executing the same, as it may deem proper in the circumstances of the case; and the order of the Court shall not be subject to appeal, but the party against whom the same may be pronounced shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order.

Of the Execution of Decrees for Money by Attachment of Property.

CLXXV.

What property may be attached in execution of decree.

If the decree be for money, and the person or persons applying for execution thereof shall desire that the amount shall be levied from the estate and property of the person or persons against whom the same may have been pronounced, the Court shall cause the attachment of any lands, houses, goods, chattels, effects, money, bank notes, cheques, bills of exchange, promissory notes, hoondees, Government securities, bonds, or other securities for money, debts, shares in the capital or joint stock of any railway, banking, or other public company or corporation, or other property whatsoever, moveable or immoveable, belonging to the defendant or defendants, and whether the same be held in his or their own name or names, or by another person or other persons in trust for him or them, or on his or their behalf, to the amount or value of the sum decreed and costs, or to such extent as may be deemed necessary for the purpose of securing the satisfaction and payment of such amount and costs.

CLXXVI.

The attachment is to be made by seizure when the property is goods and chattels.

By seizure or by prohibitory order when it is real estate.

By prohibitory order only when it is debts.

By notice when it is money in deposit in a Court of Justice or Government office.

Where the property shall consist of goods, chattels, effects, or other moveable estate, the attachment shall be made by actual seizure, and the bailiff or other officer shall keep the same in his own custody, or in the custody of his subordinates, and shall be responsible for the due custody thereof. Where the property shall consist of lands, houses, or other immoveable estate, the attachment may also be made by actual seizure, but it shall be in the option of the Court, if it shall think proper, instead of directing its officer to make seizure and assume possession of the property, to issue a written order prohibiting the sale, mortgage, gift, or other transfer thereof, and all persons from receiving or taking the same by purchase, gift, or otherwise howsoever, and also prohibiting all ryots or cultivators and other tenants and occupiers of the land from paying their rents to any person or persons whomsoever, until the further order of the Court; with permission in the meantime to pay their rents into Court, to the treasurer or other proper officer who may be authorized to receive or grant receipts for the same. Where the property shall consist in whole or in part of debts, or of shares in any railway, banking, or other public company or corporation, the attachment shall be made in all cases by a written order of the Court, prohibiting the creditor from receiving the debts, and the debtor from making payment thereof to any person or persons whomsoever, until the further order of the Court, or prohibiting the person in whose name the shares may be standing from making any transfer of the shares or receiving payment of any dividends thereof until such further order. Where the property shall consist in whole or in part of money standing in the name of the defendant or to his account, and in deposit in any Court of Justice or office of Government, or of interest on Government paper, the attachment shall be made by a notice to such Court or office requesting that the money or interest may be held, subject to the further orders of the Court by which the notice may be issued.

CLXXVII.

When the attachment is by prohibitory order, how the order is to be made known.

In the case of lands, houses, or other immoveable property, the written order shall be read aloud at some place on or adjacent to the same lands, houses, or other property, and shall be fixed up in some conspicuous part of the Court House; and if the lands, houses, or other immoveable property are situated beyond the limits of the town of Calcutta, a copy of the written order shall also be fixed up in the cutchery of the collector of the zillah in which the lands, houses, or other immoveable property may be situated. In the case of debts, the written order shall also be fixed up in some conspicuous part of the

Court House, and copies of the written order shall be sent by post to each individual debtor. And in the case of shares in the capital or joint stock of any railway, banking, or other public company or corporation, the written order shall in like manner be fixed up in some conspicuous part of the Court House, and a copy of the order shall be sent to the manager, secretary, or other proper officer of the company.

CLXXVIII.

All private alienations of property under attachment to be null and void.

After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property or shares attached, whether by sale, gift, or otherwise, and any payment of the debt or debts or dividends to the defendant or defendants, during the continuance of the attachment, shall be null and void.

CLXXIX.

The Court may direct money or bank notes to be paid to the plaintiff, or other attached property to be made over to him at a reasonable price, or sold by public auction.

In all cases of attachment under the preceding articles, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank notes, or a sufficient part thereof, shall be paid over and delivered to the party or parties applying for execution of the decree; or that any part of the property so attached as may not consist of money or bank notes, so far as may be necessary for the satisfaction of the decree, shall be transferred and delivered to the party or parties applying for execution of the decree, if he or they shall be disposed to accept the same in satisfaction or part satisfaction of the amount decreed and costs, at the market value or such price as the Court may deem fair and reasonable; or that any part of the property so attached shall be sold, and that the money which may be realized by such sale, or a sufficient part thereof, shall be paid to such party or parties.

CLXXX.

Where the property consists of debts or real estate a manager may be appointed.

Where the property attached shall consist of debts due and owing to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable estate or property, it shall further be competent to the Court to appoint a manager of the said estate or property, with power to sue for and compound for the debts, and to collect the rents or other receipts and profits, or to raise money by mortgage or conditional sale of the land or other immoveable property, and to make and execute such deeds or instruments in writing as may be necessary or requisite for the purpose, and to pay and apply the same rents, profits, or receipts, or money so to be raised, towards the payment and satisfaction of the amount of the decree and costs; and in any case in which a manager shall be appointed, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

CLXXXI.

Attachment to be released after full satisfaction of the decree.

When full satisfaction shall be made of the amount decreed and costs, with all charges and expenses which may be incurred by the said attachment, or the same shall be otherwise paid and satisfied by the defendant or defendants, the attachment shall be forthwith released; and if the defendant or defendants shall desire that due intimation shall be given of such release, the order for the release of the attachment shall, at his or their expense, be proclaimed and intimated in the same manner as herein-before prescribed for the proclamation of the attachment.

Of Claims to attached Property.

CLXXXII.

How claims and objections to sale of attached property are to be investigated.

In the event of any claim being preferred to or objection offered against the sale of lands or any other real or personal property which may have been attached in execution of a decree, or under and by virtue of any order for sequestration which may be passed before judgment, as not belonging to the defendant or defendants, and consequently not liable to be sold in execution of a decree against him or them, the Court shall, subject to the proviso

contained in the next succeeding article, proceed to investigate the same in the same manner and with the like powers as if the claimant had been originally made a defendant to the suit, and also with such powers as regards the summoning of the original defendant or defendants as are contained in Articles CLXXI. and CLXXII. And if it shall appear to the satisfaction of the Court that the land or other real or personal property so advertised to be sold in execution of the decree was not in the possession of the party against whom execution is sought, or of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, or that being in the possession of the party himself at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person or persons, the Judge shall pass an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other real personal property advertised to be sold in execution of the decree was in possession of the party against whom execution is sought, as and for his own property, and not for or on account of any other person or persons, or was in the possession of some other person in trust for him, or in the occupancy of ryots, or cultivators, or other persons paying rent to him at the time when the property was attached, the Court shall pass an order disallowing the claim and shall direct the decree to be executed. The order which may be passed by the Court under this article shall not be subject to appeal, but the party against whom the same may be given shall be at liberty to bring a suit to establish his right, at any time within one year from the date of the order.

CLXXXIII.

Claims and objections should be preferred at the earliest opportunity.

The claim or objection shall in all cases be preferred or made at the earliest opportunity to the Court that shall have ordered the attachment; and if the property to which the claim or objection applies shall have been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding article; provided that if it shall appear that the preferring or making of the claim or objection has been designedly and unnecessarily delayed, with a view to obstruct the ends of justice, the sale shall not be postponed, and the claimant shall be left to prosecute his claim after the sale by a regular suit.

Of Sales in Execution of Decrees.

CLXXXIV.

Sales to be by public auction; exception as to Government paper.

Sales in execution of decrees shall be conducted by the proper officer of the Court, and shall in all cases be made by public auction in manner herein-after mentioned, except where the property to be sold shall consist of Government securities; and with respect to such securities, it shall be competent to the Court to authorize its officer, or any other person whom it may think proper to appoint, to sell and dispose of the same through a broker at the market rate of the day, and, if the endorsement of the party in whose name any such security is standing shall be required to transfer the same, to endorse such security thus "A.B. by C.D. by order of" (as the case may be), and in the meantime, until such sale, to receive any interest which may become due thereon, and to sign receipts for the same; and any endorsement which shall be made as aforesaid shall be as effectual to pass the said securities, and to give a good title to the holder thereof, and any receipt which shall be signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or signed by the party himself or his constituted attorney.

CLXXXV.

How other property taken in execution must be sold.

In all cases of intended sale, whether of moveable or immoveable property, in execution of any decree or other judicial process, where the property shall not consist of Government securities, and in all sales of Government securities, when the Court shall direct that the same be sold by public auction, a proclamation of the intended sale, with particulars of the time and place of sale, of the property to be sold, including the jummah of the estate when the

property to be sold is an estate paying revenue to Government, or any portion of any such estate, and of the amount for the recovery of which the sale is ordered, shall be made in the current language of the country, and at Calcutta it shall also be made in the English language, at least thirty days before the appointed day of sale, exclusive of the day of sale, and of the date on which the proclamation may be ordered. Such proclamation shall be made, in Calcutta, in the mode that has been usual in the case of sales by the sheriff, and at other places in the usual mode, by beat of drum, on the spot where the property is attached; and a written notification to the same effect shall be affixed in some conspicuous place in the Court of the judge who shall have ordered the sale, and also in the Court of the Zillah judge, where the judge who ordered the sale is subordinate to the Zillah judge. When the attachment shall have taken place at some place beyond the limits of the ordinary original jurisdiction of the High Court, the written notification shall also be affixed in some conspicuous place within the town or village in which the attachment may take place, and the cutcherry of the collector, and also in the Court of the local moonsiff.

CLXXXVI.

Nothing but the right title and interest of the defendant guaranteed to the purchaser.

In all cases of a public sale of property in execution of a decree, it shall be clearly explained to the bidders at the sale, that nothing is guaranteed to them in the land or other property sold beyond the rights and interests therein of the individuals answerable for the amount of the decree or other process in execution of which the sale is made.

CLXXXVII.

The process for attachment and sale may in certain cases be issued simultaneously.

The usual process for attachment and sale in such cases, when the property to be attached consists of goods, chattles, or other personal estate other than debts, may either be issued successively or simultaneously, as the Judge directing the sale may in each instance think proper; but no sale shall in any instance take place without a previous proclamation for the period specified in Article CLXXXV.; and any material irregularity in the sale which may be established on investigation to the satisfaction of the Court by whom the sale may have been ordered, shall be sufficient to invalidate the sale, provided that an application objecting to the sale on the ground of such irregularity be made to the Court by the party objecting thereto, either in person, or by Attorney or Vakeel, within one month after the sale.

CLXXXVIII.

The sale, if not objected to for irregularity, for if the objection is disallowed, shall become absolute.

If no such application as is mentioned in the last preceding Article be made within one month after the sale, or if such application shall be made and the objection shall be disallowed, the judge shall pass an order confirming the sale; and, in like manner, if such application shall be made, and if the objection be allowed, the judge shall pass an order setting aside the sale for irregularity. The order which may be passed in either case unless appealed from, and if appealed from then the order passed on the appeal, shall be final, and the party against whom the same has been given shall be precluded from bringing a fresh suit for establishing his claim.

CLXXXIX.

Certificate to be granted to the purchasers of land.

After the sale shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest, to all intents and purposes whatsoever, any law or practice to the contrary thereof notwithstanding.

CXC.

And delivery made of property sold as far as practicable.

When the property sold shall consist of goods, chattels, or other personal estate of which seizure has been made, the same shall also be delivered to the purchaser or purchasers thereof; and where it shall consist of lands, houses, or other immoveable property, the right, title, and interest of the defendant therein shall, as far as practicable, be delivered to the purchaser or purchasers thereof by erecting a pole upon some place within or adjacent to the

land or other immoveable property, and proclaiming by beat of drum, at some convenient place or places, to the occupants thereof, that the right, title, and interest of the defendant or defendants therein has been transferred to the purchaser or purchasers.

CXCI.

If the sale be set aside price to be returned to purchaser.

Whenever a public sale is set aside as invalid under Article CLXXXVII., or on any account whatever, the purchaser shall be entitled to receive back his purchase money on restoring any property delivered over to him, with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

Of the Execution of Decrees by Imprisonment.

CXCII.

Subsistence-money of a defendant in gaol how fixed and furnished.

When a defendant under a decree is committed to prison in execution thereof, the judge shall fix whatever monthly allowance he shall think sufficient for his subsistence, not exceeding per day, which shall be supplied by the party at whose instance the decree may have been executed, to the proper officer of the Court, or of the gaol where the defendant may be in custody, by monthly payments in advance, on or before the 1st day of each month; the first payment to be made on the day of imprisonment for such portion of the current month as may remain unexpired.

CXCIII.

Imprisonment for debt limited to two years.

A defendant will be released at any time on the decree being fully satisfied, or at the request of the person or persons at whose instance he mayhave been imprisoned, or on such persons omitting to pay the allowance as above directed, for the space of twenty-four hours after it has become due; and further, his imprisonment on account of the decree which occasioned it shall not, in any case, exceed two years.

CXCIV.

Subsistence money to be added to amount of decree.

Sums disbursed by a plaintiff for the subsistence of a defendant in gaol shall be added to the decree, and shall be recoverable from his property under the ordinary rules; but the defendant shall not be detained in custody or arrested on account of such disbursements.

CXCV.

Application may be made for release from confinement on a surrender of the whole of the debtor's property.

Any person in confinement under a decree who is not entitled to the benefit of any Act for the relief of insolvent or bankrupt debtors in India, may at any time procure his enlargement by making an application to the judge to that effect, and furnishing in writing a full and fair account of all his property of whatever nature, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him, and of the places respectively where such property is to be found, and moreover assigning the whole of such property to such person as the Court may direct, or such part thereof as may be sufficient for the satisfaction of the decree. In such case the judge shall cause the Plaintiff to be furnished with a copy of the account of the defendant's property, and call on him within a reasonable period, to be fixed by the judge, to make proof of any fraudulent concealment or misrepresentation made by the defendant; and on his failing to make such proof within the period specified shall cause the defendant to be set at liberty.

CXCVI.

If guilty of fraud or concealment, debtor's imprisonment may be extended to two years;

and he may be further dealt with criminally on

But if the plaintiff shall within the time specified, or at any subsequent period, prove to the satisfaction of the Judge that the defendant, for the purpose of procuring his enlargement without satisfying the decree, wilfully concealed property, or his right or interest therein, or fraudulently transferred or removed property, or committed any other act of bad faith, the Judge shall, at the instance of the plaintiff, either retain the defendant in confinement, or commit him to prison, as the case may be, unless he shall have already been in confinement two years on account of the decree; and may also, if he shall think

account of his fraud.

proper, send the defendant to the magistrate to be dealt with according to the provisions of Clause 193 of the Penal Code.

CXCVII.

Though the defendant be released, his property is liable for the decree.

A defendant once enlarged shall not again be imprisoned on account of the same decree except under the operation of the last preceding Article, but his property will continue liable, under the ordinary rules, to attachment and sale in satisfaction of the decree until the same shall be fully made.

CXCVIII.

Attaching creditor to be first paid out of property attached.

Whenever property is attached in execution of a decree, on the application of any person or persons, such person or persons shall be entitled to be first paid out of the proceeds thereof, notwithstanding a subsequent attachment of the same property by another party in execution of a prior decree

Of the Enforcement of a Decree out of the Jurisdiction of the Court by which it was passed.

CXCIX.

The decrees of any Courts may be executed beyond their own jurisdiction by other Courts.

A decree which cannot be enforced or executed within the jurisdiction of the Court by which it was passed may be enforced or executed within the jurisdiction of another Court, in the manner following:

CC.

How application is to be made for such execution.

The party may apply to the Court which shall have passed such decree for a copy thereof, and also for a certificate that satisfaction of such decree has not been obtained by execution within the jurisdiction of the said Court, also for a copy of any order for execution of such decree that may have been passed. The Court, unless there be any sufficient reason to the contrary, shall cause such copy and certificate to be furnished; and the same shall be signed by the judge or one of the judges of the Court, and sealed with the seal of the Court.

CCI.

Judge certifying decree, how to describe himself.

If such Court shall be the principal Civil Court of original jurisdiction in the district, the judge shall describe himself accordingly in the certificate, and shall also name the Court and the district.

CCII.

Certificate to pass from Chief Court of the district to Chief Court where it is to be executed.

If the Court shall not be the principal Civil Court of original jurisdiction in the district, the copy of the judgment, and of the order for execution, if any, and the certificate of the judge shall without delay be transmitted to the principal Civil Court of original jurisdiction in the district; and the judge or one of the judges of such Court shall issue a certificate under his hand and the seal of the Court, verifying the signature of the Judge of the Court in which the decree shall have been given to the documents above mentioned; and in such certificate the judge signing the same shall describe himself as the judge or one of the judges of the principal Civil Court of the district, and shall also name the Court and the district.

CCIII.

Court applied to for execution, how to proceed.

All copies and certificates, which may be furnished by or transmitted to the principal Civil Court of original jurisdiction in the district in which such decree shall have been given, shall be transmitted by such Court without delay to the principal Civil Court of original jurisdiction in the district in which the party may wish to have the decree enforced or executed; and such Court shall cause the said documents to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the seal or jurisdiction of any Court, or of the signature of any judge, unless the Court to which such documents shall be transmitted shall, under any peculiar circumstances, to be specified in an order, require the same.

CCIV.

Decree or order transmitted, to be

The copy of any decree, or of any order for execution, when filed in the Court to which it shall be transmitted, for the purpose of being executed or

enforced as aforced, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may be enforced or executed by such Court, or any Court subordinate thereto, to which it may entrust the enforcement or execution thereof.

executed as that of the Court.

CCV.

When application shall be made to any of the said Courts to enforce or execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to enforce or execute the same, according to its own rules in the like cases; and the last-mentioned Court shall take cognizance of and punish all wrongful acts or irregularities done or committed in enforcing or executing such decree; and all persons disobeying or obstrubting the enforcement or execution of any such decree shall be punishable by such last-mentioned Court in the same manner as if the said decree had been pronounced by such Court.

Execution how to be enforced by Court applied to.

CCVI.

An appeal shall lie from any order of a Court for enforcing or executing the decree of another Court, in the same manner, and subject to the same rules, as if the decree had been originally passed by the Court making such order.

What appeal from orders for execution under this Act.

CHAPTER IV.

Of Contempts and Disobedience of Orders.

CCVII.

Any Judge or Court of Justice shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their Courts, and to punish the persons committing them, as therein authorized.

Disobedience of Orders, &c. under Clause 149 of the Penal Code, how punishable.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior or insulting him, or neglecting his duty.

CCVIII.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause.

Contempt of Court under Clause 197.

The offence is that of insulting or interrupting a Court of Justice.

CCIX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, it shall be competent to such Judge or Court to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto.

Contempt of lawful authority under Chapter IX.

Chapter IX. of the Penal Code is entituled "Contempts of the lawful Authority of Public Servants."

CCX.

Provided that Principal Sudder Ameens and Moonsiffs shall not exceed the powers of punishment conferred on them respectively as Judges of subordinate Criminal Courts, in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that when a person has been sentenced to punishment under the provisions of the last preceding article for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge or Court of Justice to remit the punishment, on the submission of the offender to the order or requisition of such Judge or Court of Justice.

Ordinary powers of punishment not to be exceeded.

Punishment may be remitted on submission of the Offender.

The Articles under the head of Contempts are a repetition, *mutatis mutandis*, of the Articles contained under Chapter VIII. of the Code of Penal Procedure, and are here inserted for the guidance of the Civil Judge.

CHAPTER V.

Reference to Arbitration.

CCXI.

Reference on application of the parties.

If the parties to a suit are desirous that the matters in difference between them shall be referred to the final decision of one or more arbitrator or arbitrators, they may apply to the Court at any time before final judgment for an order of reference.

CCXII.

Application how to be made.

The application shall be made by the parties in person, or through one of the attorneys or vakeels of the Court, specially authorized in that behalf by an instrument in writing, which shall be presented to the Judge at the time of making the application, and shall be filed with the proceedings in the cause.

CCXIII.

Appointment of arbitrators may be made by Court at the desire of parties.

If the parties cannot agree with respect to the arbitrator or arbitrators, or if the person or persons nominated by them shall refuse to accept the arbitration, or having accepted it shall refuse to act, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint some proper person or persons to be the arbitrator or arbitrators, as the case may be.

CCXIV.

Order of reference.

The Court shall fix such time as it may think reasonable for the delivery of the award, and shall by an order under its seal, in which the time so fixed shall be specified, refer to the arbitrator or arbitrators the matters in difference in the suit between the parties.

CCXV.

When the reference is to two or more, the order shall provide for difference of opinion.

If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint their own umpire, or otherwise as may be agreed upon between the parties; or if they cannot agree as to any of these particulars, as the Court itself may determine.

CCXVI.

Power to Court to direct arbitration.

If on the day mentioned in the summons or at any subsequent hearing of the cause it shall appear to the Judge that the matter in dispute between the parties consists wholly or in part of matters of mere account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of court, or to some other proper person whom the Judge may think fit to appoint, upon such terms as to costs and the remuneration of the arbitrator, or otherwise, as the judge shall think reasonable.

CCXVII.

Court may determine particular facts or points of law.

If it shall appear to the Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law or fact fit to be decided by the Court, it shall be lawful for the Judge to decide such question of law or fact, and his decision thereupon shall be taken and acted upon by the arbitrator as conclusive.

CCXVIII.

If action be commenced by one party to a deed of arbitration, Court may stay proceedings.

Whenever the parties to any deed or instrument in writing shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person claiming through or under him or them, shall nevertheless commence any suit against the other party or parties, or against any person or persons claiming through or under him or them, in respect of the matters so agreed to be referred or any of them, it shall be lawful to the Court in which the suit is brought, on application by the defendant or defendants at his or their first appearance before the Judge, in obedience to any summons that may be issued in such suit, upon being satisfied that no sufficient reason exists why such matters cannot be or

ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the commencement of such suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make an order for staying all proceedings in such suit, on such terms as to costs or otherwise as to such Court may seem fit: provided always, that any such order may at any time thereafter be discharged or varied as justice may require.

CCXIX.

Powers of arbitrators.

Upon any reference by an order of Court, whether compulsory or by consent, the arbitrator or arbitrators and umpire shall have all the like powers as the Court would have in the like circumstances; and the Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators, or umpire, or the parties, may desire to have examined, as the Court is authorized to issue in causes tried before it; and persons not attending in consequence of such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators, or umpire, during the investigation of the suit, shall be subject to the like disadvantages, penalties, and punishments, by orders made by the arbitrator or arbitrators, or umpire, as they would incur for the same offences in suits tried before the Court; provided, that the arbitrator or arbitrators, or umpire, shall report the order, with the reason for making it, to the Court, and obtain its consent thereto, which is to be signified by the Judge's signing the order.

CCXX.

Extension of time for making award.

In cases where the arbitrators or umpire shall not have been able to complete the award within the period specified in the order from want of the necessary evidence or information, or other good and sufficient cause, the Court may from time to time enlarge the period for the delivery of the award if it shall think proper. In any case in which an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

CCXXI.

In case of death, incapacity, or refusal to act of arbitrators or umpire, Court may appoint others in stead.

If, in any case of reference to arbitration by an order of Court, the appointed arbitrator or arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court, on the application of the parties, or any of them, to appoint a new arbitrator or arbitrators, or umpire, in the place or stead of the person or persons so dying, or refusing or becoming incapable to act; and where two arbitrators are at liberty by the terms of the order of reference to appoint an umpire and do not appoint an umpire, then and in every such instance any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven clear days after such notice shall have been served no umpire be appointed, it shall be lawful for the Court upon the application of the party having served such notice as aforesaid, upon proof to its satisfaction of such notice having been served, to appoint an umpire. In any case of appointment under this article, the arbitrator or arbitrators, or umpire so appointed, shall have the like power to act in the reference, as if their name or names had been inserted in the original order of reference.

CCXXII.

Award how to be submitted to Court.

When a final award in a cause shall be made, either by the arbitrators or umpire, it shall be submitted to the Court under the signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the cause.

CCXXIII.

Arbitrator may state special case.

It shall be lawful for the arbitrator or arbitrators and umpire, upon any reference, by an order of Court, whether compulsory or by consent of parties, if he or they shall think fit, and if it is not provided to the contrary, to state his or their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

CCXXIV.

Power to send back to arbitrator.

In any case where reference shall be made to arbitration as aforesaid, the Court shall have power at any time and from time to time to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the same arbitrator or arbitrators or umpire, upon such terms as to costs and otherwise as to the said Court may seem proper.

CCXXV.

Judgment to be pronounced in terms of the award.

If the Court shall not see cause to remit the matters referred for reconsideration in manner aforesaid, it shall pronounce judgment conformably to the award, unless the same shall be set aside, or to its own opinion on the special case if the award shall have been submitted to it in the form of a special case, and the decree shall be carried into execution in the same manner as other decrees of the Court.

CCXXVI.

Applications to set aside the award.

All applications to set aside any award made on a compulsory reference, or a reference by consent of the parties, shall be made within ten days after the same has been submitted to the Court; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, judgment shall be pronounced as mentioned in the last preceding article, and such judgment shall be final between the parties.

CHAPTER VI.

Of Proceedings on Agreement of Parties.

How Questions may be raised for the Decision of a Civil Court by any Persons interested.

CCXXVII.

Questions of fact, or of law or equity may be raised by agreement for the decision of any Court having jurisdiction.

Parties interested or claiming to be interested in the decision of any question or questions of fact, or law or equity, may enter into an agreement which shall not be subject to any stamp duty, that upon the finding of a Judge, in the affirmative or negative of such question or questions of fact, or of law or equity, a sum of money fixed by the parties, or to be determined by the Judge, shall be paid by one of the parties; or that some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or that one or more of the parties shall do or perform some particular legal act or acts, or shall refrain from doing or performing some particular act or acts specified in the agreement. Where the agreement is for the delivery of some property, moveable or immoveable, or for the doing or performing, or the refraining to do or perform any particular act or acts, the estimated value of the property to be delivered, or to which the act or acts specified may have reference, shall be stated in the agreement.

CCXXVIII.

The agreement to be filed and numbered as a cause.

The agreement may be filed in any Court having jurisdiction in the matter, with the proper officer, and when so filed shall be numbered and registered as a cause between some or one of the parties interested, or claiming to be interested, as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; but it shall not be necessary to issue any process for summoning the defendant.

CCXXIX.

Parties to be subject to the Court's jurisdiction.

After the agreement shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and shall be bound by the statements therein.

CCXXX.

Hearing and disposal of the case.

The case shall be set down for hearing as an ordinary suit; and if the Judge shall be satisfied, after an examination of the parties, their attorneys or vakeels, or taking such evidence as he may deem proper, that the agreement was duly

executed by the parties, and that they have a *bonâ fide* interest in the question or questions of fact or of law or equity stated therein, and that the same is or are fit to be tried or decided, he shall proceed to record and try, or hear the same, and deliver his finding or opinion thereon, in the same way as in an ordinary suit; and shall, upon his finding or deciding upon the question or questions of fact or of law or equity, give judgment for the sum fixed by the parties, or so ascertained as aforesaid, or otherwise, according to the terms of the agreement; and upon the judgment which shall be so given, decree shall follow, and may be executed in the same way as if the judgment had been pronounced in a contested suit.

Of Special Cases for the Opinion of the High Court.

CCXXXI.

Persons interested or claiming to be interested in any question as to the construction of any Act of Parliament, or any Regulation of the Madras [*Bombay*] Code, or Act of the Council of India, will, deed, or other instrument in writing, or any article, clause, matter, or thing therein contained, or as to the title or evidence of title to any real or personal estate contracted to be sold or otherwise dealt with, or as to the parties to or the form of any deed or instrument for carrying any such contract into effect, or as to any other matter or thing, may, with the consent of a Judge of the High Court, concur in stating the same in the form of a special case for the opinion of the Court; and all executors, administrators, and trustees may concur in such case.

Special case may be stated by any persons interested.

CCXXXII.

Every such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby, and shall be signed by the parties or their advocates, attorneys, or vakeels.

What it is to contain.

CCXXXIII.

The special case shall be filed with the proper officer of the Court, and shall be numbered and registered as a cause between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff, and the others or other of them as defendants or defendant; but it shall not be necessary to issue any process for summoning the defendants or defendant.

To be filed and numbered as a cause.

CCXXXIV.

After the special case shall have been filed, all the parties thereto shall be subject to the jurisdiction of the Court, and such of the parties as are legally competent to bind themselves, shall, for the purposes of such special case, be bound by the statements therein; and the parties who are not legally competent to bind themselves shall also be bound by the statements therein, if the Court shall think proper so to direct, after taking such precautions as may be deemed necessary for protecting the rights of such parties.

Parties thereto to be subject to Court's jurisdiction.

CCXXXV.

The special case shall be set down for hearing as an ordinary suit, and the Court, after hearing the parties, their advocates, or vakeels, shall proceed to determine the questions raised therein, or any of them, and to declare its opinion thereon, and, so far as the case shall admit of the same, upon the right involved therein, without proceeding to administer any relief consequent upon such declaration; and every such declaration of the Court shall have the same force and effect as such declaration would have had, and shall be as binding to the same extent as such declaration would have been, if contained in a judgment pronounced in a contested suit. Provided, that, if upon the hearing of such special case as aforesaid, the Court shall be of opinion that the questions raised thereby, or any of them, cannot properly be decided upon such case, the Court may refuse to decide the same.

Hearing and disposal of the case

CHAPTER VII.

Of Appeals.

Appeals from Final Decrees.

CCXXXVI.

In what cases appeals shall lie from decisions of Judges, Principal Sudder Ameens, and Moonsiffs.

An appeal shall lie, as herein-after provided, from the decisions of the Judge, the Principal Sudder Ameen, and of the Moonsiff, in all suits in which the property, or possession, or right of occupancy of land or other real property, or the right to receive rent or profit issuing out of land or other real property, or the right to hold land or other real property exempt from the payment of rent or revenue, or anything in the nature thereof, or the right to hold land or other real property subject to the payment of a fixed annual sum on account of rent or revenue, or anything in the nature thereof, or the right to any benefits, liberties, or privileges derived out of or affecting any landed or other real property, or the right to receive or collect any customary or other payments or gratuities on any account whatsoever, or the title to any office, or to any trust, or special privileges, or to any toll, fair, market, or franchise, or anything in the nature thereof respectively, shall be in question; and in all suits in which the right of inheritance from, or succession to, any person, or the validity of any marriage, divorce, will, or authority to adopt, or of any decree, bequest, or limitation under any will or settlement, or the condition or *status* of any person, in respect of relationship, religion, caste, or otherwise, or the custody or guardianship of any person, may be disputed; and in all suits for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or for breach of promise of marriage; and in all suits in which there is no specification of the estimated value of any property or of any sum of money by way of damages.

CCXXXVII.

When it shall not lie.

An appeal shall also lie from all other decisions of the Judge, the Principal Sudder Ameen, and Moonsiff, except in suits in which the amount claimed does not exceed the sum of fifty rupees.

CCXXXVIII.

When the appeal from the Principal Sudder Ameen and Moonsiff shall be to the Zillah Judge, and when to the High Court.

In suits in which the amount claimed, or the value of the property claimed, does not exceed the sum of one thousand rupees, the appeal from the decision of the Principal Sudder Ameen, or Moonsiff, as the case may be, shall be to the Zillah Judge; in suits above that sum, to the High Court at Madras [*Bombay*]. And in suits in which there is no specification of the estimated value of any property or of any sum of money by way of damages, the appeal from the decision of the Principal Sudder Ameen shall be to the High Court.

CCXXXIX.

The decision of the Zillah Judge in appeal is final.

The decision of the Judge in appeals from the decision of the Principal Sudder Ameen, or Moonsiff, shall be final; provided, however, that it shall be competent to the Judge, at the time of deciding an appeal from the judgment of a Principal Sudder Ameen or Moonsiff, to record his opinion, certifying in his judgment his reasons for the same, that the case is one for revision by the High Court, and when he shall have so certified, the High Court shall admit a special appeal from the decision of the Zillah Judge, in the event of either of the parties making application to that effect.

In original suits the appeal from the Zillah Judge shall be to the High Court.

CCXL.

The appeal from the decisions of the Judge, in original suits, shall be to the High Court at Madras [*Bombay*].

An appeal lies from Judges of the High Court exercising original jurisdiction to the High Court in its appellate capacity.

CCXLI.

An appeal shall lie in all cases from the Courts of original jurisdiction constituted by one or more Judges of the High Court to one of the Appellate Courts constituted by Judges of the High Court.

CCXLII.

How the A Court is t stituted.

In all cases of appeal from decisions of the Courts of original jurisdiction mentioned in the last preceding article, the Appellate Court shall consist of a greater number of Judges than the Court which passed the decision appealed from. And in all cases whatsoever if there should be a difference of opinion among the Judges of the Appellate Court the decision shall be according to the opinion of the majority; and if the opinions of the Judges are equally divided, the decision of the Lower Court shall be affirmed.

Decision in all cases of appeal.

How Appeals are to be preferred.

CCXLIII.

Appeal to be preferred by a memorandum to be filed within specified time.

The appeal shall be made in the form of a memorandum as herein-after prescribed, which may be presented in the Appellate Court, or in the Court in which the decision objected to was passed for transmission to the Appellate Court. In either case, the memorandum must be presented within the times herein-after specified, unless the appellant shall, by a petition to the Appellate Court, show sufficient cause for not having presented it within such limited periods; that is to say, within thirty-one days if the appeal be to the Zillah Judge, or be to the High Court from a decision of a Court of original jurisdiction constituted by one or more of its own Judges, and within ninety-one days if the appeal be to the High Court from the decision of a Zillah Judge, Principal Sudder Ameen, or Moonsiff; the days to be reckoned in all the cases as immediately following and exclusive of the day on which judgment was pronounced.

CCXLIV.

Time may be extended by an application.

An application for an extension of the time for presenting a memorandum of appeal may be made directly to the Appellate Court, or through the intervention of the Lower Court, at the option of the applicant. If the application for extension of time be made to the Lower Court, that Court shall record the reasons assigned for the application, and shall transmit a copy of its proceedings to the Appellate Court.

CCXLV.

What the memorandum is to contain.

Every memorandum of appeal shall set forth concisely, and under distinct heads, grounds of objection to the decision appealed against, without any argument or narrative, and such grounds shall be numbered consecutively. But the appellant shall not be tied down to the objections set forth by him in his memorandum of appeal.

Form of memorandum.

The memorandum of appeal shall be in the following form, or to the following effect—

Memorandum of Appeal.

(*Name, &c. as in Register.*)	Plaintiff.
(*Name, &c. as in Register.*)	Defendant.

[*Name of Appellant*] Plaintiff [*or* Defendant] above named appeals to the High Court at Madras [*Bombay*] [*or* Zillah Court at *as the case may be*], against the decree of the Moonsiff, or Principal Sudder Ameen of [*or as the case may be*], in the above cause, dated the day of ; for the following among other reasons.

CCXLVI.

Memorandum to be forwarded to the Appellate Court.

If the memorandum of appeal be presented in the Court in which the decree objected to was passed, such last-mentioned Court shall forthwith forward the same to the Appellate Court, with an endorsement thereon of the date on which it was presented.

CCXLVII.

What proceedings to be forwarded to the Appellate Court, and when.

Within one month from the date on which the memorandum of appeal shall be presented in the Lower Court, or one month from the date on which intimation shall be received by the Lower Court from the Appellate Court that the memorandum of appeal has been presented in the Appellate Court, unless the Appellate Court shall think proper to enlarge the time, and then within such enlarged time, the Judge of the Lower Court shall, except as provided in the next succeeding Article, certify under his hand and the seal of his Court the record duly made up and authenticated, including authenticated copies of all his own material proceedings in the cause, and the original depositions, exhibits, and every original paper read in the cause, together with the written statements, if any, that may have been presented by the parties, or any of them, and received and recorded by the Judge, and shall transmit the record so made up to the Appellate Court. Previous to transmitting the above-mentioned papers to the Appellate Court the Judge of the Lower Court shall cause true and faithful copies of all the originals to be made out and authenticated by the proper officer of his Court, and deposited in the Court in lieu of the originals. The copies shall be records of the Court, and shall be received in evidence in any other Court in the same way as originals. In cases where any original deposition or other original proceedings or matter whatsoever shall have been previously entered in a book, which may likewise contain other proceedings in other distinct cases, or any other matter, so that such original papers cannot be transmitted to the Appellate Court without the other proceedings or matters, the Judge of the Lower Court, within the time and in the manner before directed, shall certify a true and authentic copy of such original papers, and that the original of each copy so transmitted is entered in such book. In cases where any original paper shall have been mislaid or lost, and a copy of it shall have been entered in any book or proceedings of the Court, the copy shall have the force and effect of the original, and the Judge shall transmit a copy of it to the Appellate Court, and shall in like manner certify that the original, after due search, cannot be found. A memorandum of all expenses which may be incurred in the preparation of copies of papers or otherwise, in or about the making up and transmitting the record, shall be forwarded therewith to the Appellate Court, and shall be considered costs in the cause.

CCXLVIII.

In certain appeals to the High Court the proper officer to attend in the Appellate Court with the original record of the case.

In appeals to the High Court from the Courts of original jurisdiction constituted by one or more of its own Judges, and in appeals from the Principal Sudder Ameen and Moonsiff to the Zillah Judge, the proper officer shall attend in the Appellate Court, from time to time as may be required, with the original record of the proceedings in the cause.

Of staying and executing Decrees under Appeal.

CCXLIX.

When and on what terms execution of decree may be stayed.

When any party or parties appealing is or are directed to pay any sum of money, or to perform any duty, or when the decree is for the possession of land or any other property, real or personal, the Court whose judgment is appealed from shall and is hereby empowered to award that its judgment shall be carried into execution, or that sufficient security shall be given for the performance of such judgment; provided always, that where the Court of Original Jurisdiction shall think fit to order the judgment to be executed, security shall be taken from the other party or parties for the due performance of such order or judgment as may be passed in the Court of Appeal. But this decision shall itself be subject to appeal.

Of Procedure in Appeals from final Decrees.

CCL.

When a memorandum of appeal shall have been presented in or transmitted to an Appellate Court, the clerk (or proper officer) of the Appellate Court shall endorse thereon the date of presentment if it was presented in the Appellate Court, or the date of receipt if it was transmitted from the Lower Court, and shall register the appeal in a book to be kept for the purpose, and called the Register of Appeals. How the appeal is to be entered.

CCLI.

The Register shall be kept in the form contained in the schedule (B.) hereunto annexed; and a certified copy of the Register, under the seal of the Court, shall be received in evidence in all Courts of Justice in India. Form of the register.

CCLII.

It shall not be necessary in any Court of Appeal to take any security for costs, but it shall be in the discretion of every such Court of Appeal to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to answer. Court of Appeal may, at its discretion, require security for costs from appellant.

CCLIII.

A day shall be fixed by the Appellate Court for the hearing and disposal of the appeal; which day shall not be earlier, in cases in which a record of the suit shall be transmitted by the Lower Court, than forty-two days from the day on which the record may have been received in the Appellate Court, and shall not be earlier, in cases appealable to the High Court, when the officer is required to attend the Appellate Court with the original record of the suit, than twenty-one days from the presentment of the memorandum of appeal, but shall otherwise be as early, in all cases, as can be conveniently fixed, with a due regard to the state of business in the Court; the days to be reckoned in all the cases as exclusive of the day of hearing, and of the day on which the record may have been received, or the memorandum of appeal presented, in the Appellate Court. Notice of the day which has been fixed for the hearing of the appeal shall be sent by the proper officer of the Appellate Court to the proper officer of the Lower Court from the decree of which the appeal has been preferred, and shall be served on the appellant and respondent, in the same way as herein-before provided for in respect to the service of a summons. The notice to the appellant shall contain an additional intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, either in person or by an attorney or vakeel of the Appellate Court, his appeal will be dismissed for want of prosecution. And the notice to the respondent shall contain an intimation, that if he does not appear in the Appellate Court on the day so fixed for the hearing of the appeal, the case will be heard and decided *ex parte* in his absence. Day to be fixed for hearing the appeal.

CCLIV.

On the day in that behalf mentioned in the notices, and unless the Court shall otherwise direct, from day to day, until the cause is called on, the parties, appellant and respondent, shall be in attendance in the Appellate Court, in person or by an attorney or vakeel of the Court, duly empowered in manner herein-before mentioned, to represent them in all matters relating to the prosecution or defence of the appeal. The parties to be in attendance on day so fixed.

CCLV.

If on the day fixed for the hearing of the appeal, or on any other day subsequent thereto on which the cause may be called on, the appellant shall not appear in person, or by an attorney or vakeel of the Court, the appeal shall be dismissed for default. If the appellant appears in person, or by attorney or vakeel, and the respondent shall not appear in person, or by attorney or vakeel, the appeal shall be heard *ex parte* in his absence. Consequences of non-appearance.

CCLVI.

When an appeal is dismissed, intimation to be sent to the Lower Court.

Where an appeal is dismissed for default, an intimation of the dismissal shall be sent to the Court of original jurisdiction, and the costs of preparing copies of papers, and making up and transmitting the record, may be realized from the appellant, under an order of that Court, to be enforced in the same manner as a decree of Court.

CCLVII.

How an appeal dismissed for default may be restored.

In all cases in which an appeal shall be dismissed for default of prosecution, it shall be competent to the appellant to apply within reasonable time to the Appellate Court, for the re-admission of his appeal. The application shall be accompanied with a certificate from the Court of original jurisdiction, that the costs mentioned in the preceding article, when ordered to be realized from the appellant, have been fully paid and satisfied; and if the Appellate Court shall think proper to grant such application, a day shall be thereupon fixed for the hearing of the appeal, and a fresh notice shall be issued to the respondent, to be served in the same way as the first notice, and with the like additional intimation as is herein-before provided; but it shall not be necessary to issue or serve any notice on the appellant.

CCLVIII.

The Appellate Court, how to give judgment.

The Appellate Court, after hearing the cause, shall proceed to give its judgment in the same manner as herein-before prescribed in regard to the judgment of Courts of original jurisdiction, for confirming, or reversing, or modifying and altering the decree of the Lower Court, as the Appellate Court shall think proper.

CCLIX.

No decision to be reversed for irregularity.

No decision shall be reversed or altered, nor shall any case be referred back to the Court of original jurisdiction, on account of any error, defect, or irregularity not affecting the merits of the case.

CCLX.

When a case may be remanded by Appellate Court.

If the Court of original jurisdiction shall have disposed of the case upon any preliminary point so as to exclude any evidence of fact which shall appear to the Court of Appeal essential to the rights of the parties, and the decree of the Lower Court shall be reversed by the decree in appeal, the Appellate Court may, if it think right, remit the case to the Lower Court, and cause the papers in the suit, together with a copy of the decree in appeal, to be transmitted to such Lower Court, with directions to proceed in the investigation of the merits of the case, and pass a decree therein.

CCLXI.

Power to remand limited as above.

It shall not be competent to the Appellate Court to remand a case for a second decision by the Court of original jurisdiction, except as provided in the preceding clause.

CCLXII.

When the Appellate Court may dispose of a case though the Lower Court has decided on other grounds.

When there is sufficient evidence upon the record of the Lower Court to enable the Appellate Court to pronounce a satisfactory judgment, the Appellate Court shall finally determine the case, notwithstanding that the judgment of the Lower Court has proceeded wholly upon some other ground.

CCLXIII.

When the Appellate Court may call for fresh evidence.

It shall not be competent to the parties in an appeal to produce additional evidence, whether of exhibits or witnesses; but if it appears that the Lower Court refused to admit competent evidence, or if the Appellate Court itself requires the production of exhibits or witnesses, as necessary to enable it to pronounce a satisfactory judgment, or if any other substantial cause demands a deviation from the ordinary rule, the Court may allow additional exhibits to be received, and the same and other witnesses to be examined; provided that whenever this power is exercised, the reasons for exercising it be recorded on the proceedings by the Appellate Court.

CCLXIV.

Whenever additional evidence is permitted to be received, it shall be competent to the Court of Appeal to take such evidence before itself, or to require the Lower, or any other Court, or to empower any person, to take such evidence; and it shall also be competent to the Court of Appeal to prescribe the mode by which such evidence shall be taken; and the Court of Appeal shall be at liberty to proceed by all or any of the modes aforesaid. How additional evidence is to be taken.

CCLXV.

In all cases where additional evidence is permitted to be taken, the Court shall define the point or points to which the evidence is to be confined, and record the same in the minutes of the proceedings. Points to be defined.

CCLXVI.

The Appellate Court shall have all the like powers in regard to the granting of time, adjourning the hearing of the cause, examining the parties or their attornies or vakeels, and awarding costs, or otherwise, as are herein-before contained in regard to Courts of original jurisdiction. Powers of Appellate Court.

CCLXVII.

The judgment of the Appellate Court shall in all cases be pronounced in open Court, and, after being written out, shall be signed by the judge or judges. The judgment shall be written out in the English language; and where that language is not the language in ordinary proceedings before the Court, the judgment shall be translated into the languages so being in such ordinary use, and the translation shall be signed by the judge. How the judgment of the Appellate Court is to be delivered. In what language it is to be written.

CCLXVIII.

The decree of the Appellate Court shall bear date the day on which the judgment was passed, and shall contain the number of the suit, the names and description of the parties appellant and respondent, the memorandum of appeal, a list of any additional exhibits that the Appellate Court may have allowed to be produced, and the names of any witnesses that it may have allowed to be examined. It shall also contain an exact copy of the ordering part of the judgment, or a translation thereof in the language in ordinary use in proceedings before the Court. The decree shall be sealed with the seal of the Court, and signed by the judge or judges who passed it, and copies shall be furnished to the parties in the same manner as herein-before provided for in regard to the decrees of Courts of original jurisdiction. What the decree is to contain.

CCLXIX.

A copy of the decree, certified by the clerk or proper officer of the Appellate Court, and sealed with the seal of the Court, shall be transmitted to the clerk or proper officer of the Court of original jurisdiction which passed the first decree in the suit appealed from, and shall by him be filed with the original proceedings in the cause; and an entry of the judgment of the Appellate Court shall be made in the original register of the suit. A certified copy of the decree to be transmitted to the Lower Court.

CCLXX.

Application for execution of the decree of an Appellate Court shall be made to the Court of original jurisdiction which passed the first decree or order appealed from, and shall be enforced and executed by the Court which passed the first decree or order appealed from, in the manner and according to the rules herein-before contained for the enforcement and execution of original decrees or orders made by such last-mentioned Court. How to be executed.

Appeals from Orders.

CCLXXI.

Appeals shall lie from the orders of Civil Courts as follows:— From what orders appeals shall lie.

1st. In all cases whatsoever where the order is for the punishment of a contempt committed in the presence of the Court, except when the Court which has passed the order is one of the Courts of original jurisdiction constituted by a Judge or Judges of the High Court.

2d. In all other cases whatsoever, unless otherwise specially provided for, if the decree in the suit be appealable.

3d. In all other cases, unless otherwise specially provided for, whether the decree in the suit be appealable or not, provided that the person against whom the order has been passed is not a party to the suit.

It will be observed that when the decree in the suit is not appealable, there will be no appeal from an order passed against a party to the suit, unless the order be for the punishment of a contempt committed in the presence of the Court.

CCLXXII

Court to which the appeal should be made.

The appeal from an order shall always be made to the Court to which the decree in the suit in which the order may be passed is appealable. If the order be passed in a suit in which the decree is not appealable, or in a judicial proceeding which cannot properly be titled as of any suit, the appeal from the order of a Moonsiff, or Principal Sudder Ameen, shall be made to the Zillah Judge, and the appeal from the order of a Zillah Judge shall be made to the High Court.

CCLXXIII.

The appeal not to stay proceedings.

The appeal shall not in any case stop the proceedings in the Lower Court.

Of Procedure in Appeals from Orders.

CCLXXIV.

Procedure, how it differs from the procedure in appeals from decrees.

The procedure in appeals from orders shall be in all respects the same as in appeals from final decrees, except as herein-after provided.

1. The register shall be kept in the form contained in the Schedule (C.) hereunto annexed.

2. The memorandum of appeal shall in all cases be presented in the Court in which the order objected to was passed, within five days immediately following, and exclusive of the day on which the order was pronounced.

3. Where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, the memorandum of appeal shall be accompanied with a list of the papers or depositions of which the appellant desires that copies should be transmitted to the Appellate Court.

4. The memorandum of appeal shall be transmitted to the Appellate Court within eight days from the date of presentment; and where the appeal is from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, authenticated copies of the order appealed against, and of the papers and depositions mentioned in the list accompanying the memorandum, shall be transmitted to the Appellate Court with the memorandum of appeal.

5. At the expiration of twenty days after the presentment of a memorandum of appeal in a case appealable to the Zillah Court, and thirty days after its presentment in a case appealable to the High Court, from the order of a Zillah Judge, Principal Sudder Ameen, or Moonsiff, and ten days in a case appealable to the High Court from an order of a Court of original jurisdiction constituted by one or more of its own judges, the case shall be set down for hearing in the Appellate Court, and if the Appellant does not appear on any day thereafter that the case may be called on for hearing, it shall be struck out of the file; but the Appellate Court shall have power to restore the case to the file, if sufficient cause to its satisfaction for so doing be shown within a reasonable time.

6. It shall not be necessary for the Appellate Court to call for any further papers, unless it shall think proper.

7. It shall not be necessary to give any notice to the respondent.

8. The judgment may be delivered orally, and reduced to writing in the language of the Court, by an officer of the Court, or otherwise as the Court may think proper in each particular case.

CHAPTER VIII.

Review of Judgment.

CCLXXV.

Any persons considering themselves aggrieved by a decree of any Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a Zillah Judge in appeal, from which no special appeal shall have been admitted by the High Court—or by a decree of the High Court from which either no appeal may have been preferred to Her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council,—and who, from the discovery of new matter or evidence which was not within their knowledge, or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against them—may apply in person or by attorney or vakeel, for a review of judgment by the Court which passed the decree. The application shall be made within three months from the date of the decree, but the Courts are nevertheless authorized to admit applications for a review after the period above mentioned, provided that the parties preferring the same shall be able to show just and reasonable cause, to the satisfaction of the Court, for not having preferred such application within the limited period. If the Court to which an application for a review may be presented shall be of opinion that there are not any sufficient grounds for a review, it shall reject the application, but if on the contrary it shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Court to which the application may have been presented shall grant the review, and its order in either case, whether for rejecting the application or granting the review, shall be final.

Cases in which party may apply for a review of judgment.

Within what time the application should be made.

The order of the Court for granting or refusing the review is final.

CCLXXVI.

Provided that if the Court to which the application for a review of its judgment has been presented be the High Court, whenever the judge or judges who may have passed the decree, or if the decree have been passed by two or more judges, when any of such judges, shall continue attached to the Court at the time when the application for a review is presented, and shall not be precluded by absence or other cause, for a period of six months after the application, from considering his order or opinion upon the same, it shall not be competent to any other judge or judges of the same Court to enter upon a consideration of the merits of the application, and record an order or opinion thereon.

Application for a review in the High Court must be made to the judge or judges that passed the decree.

CCLXXVII.

In all cases in which an application for a review of judgment may be granted by any Court, the Court shall give such order, in regard to the summoning of the absent party or parties and hearing of the cause, as it may deem proper in the circumstances of the case.

Whenever a review is granted the parties are to be summoned.

CCLXXVIII.

The Principal Sudder Ameens and Moonsiffs shall at the close of each month send to the Judge of the Zillah a list of the cases in which they may have admitted a review of judgment, with a statement of the grounds on which the review has been admitted, and the Judge shall in like manner, at the close of each month, send to the High Court a list of the cases in which he may have admitted a review of judgment, together with the grounds on which the review has been admitted, and shall at the same time transmit to the High Court any lists which he may have received from the Principal Sudder Ameens and Moonsiffs of cases in which they may have admitted a review of judgment, together with such remarks as he may think proper thereon.

Abstract statements of reviews admitted to be forwarded to Superior Courts.

Criminal Courts of Original Jurisdiction.

I.

The Courts for the trial of offences, other than the High Court, shall be the following:—

Criminal Courts other than the High Court.

COURTS OF SESSION;

COURTS OF THE MAGISTRATES;

SUBORDINATE COURTS; viz.:—

Subordinate Criminal Courts of the 1st Class.

Subordinate Criminal Courts of the 2d Class.

II.

The Magistrates of Madras [*Bombay*] shall exercise in Madras [*Bombay*] the same powers as the Magistrates in the Mofussil exercise in the Mofussil.

Magistrates of Madras [*Bombay*] and in the Mofussil to have like powers.

First Assistants to the Magistrate, and Principal Sudder Ameens, shall be Judges of Subordinate Criminal Courts of the 1st Class.

Second Assistants to the Magistrate, and Moonsiffs, shall be Judges of Subordinate Criminal Courts of the 2d Class.

Who are to be judges of the subordinate Criminal Courts.

III.

The Session Courts, the Courts of the Magistrates, and Subordinate Criminal Courts shall be denominated after the zillah, or city, or division in which they are respectively established.

Criminal Courts, how to be denominated.

IV.

The appointment, suspension, and removal of the Judges of the Session Courts, of the Magistrates, and of the Judges of the several Subordinate Criminal Courts, shall be regulated by such rules and orders as the Governor in Council shall, from time to time, pass.

Appointment, suspension, and removal of Criminal Judges.

V.

Each Criminal Court is to be presided over by one or more Judges; and every Judge, previous to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before any authority or person commissioned by competent authority to receive it:—

Declaration on entering upon office.

"I, *A.B.*, appointed   of the Court of   do "solemnly declare that I will faithfully perform the duties of my office "to the best of my ability, knowledge, and judgment."

VI.

Each Criminal Court is to use a seal such as shall be prescribed by the Government.

Seal.

VII.

It shall rest with the Governor in Council, upon the report of the High Court, made after such communication with the Session Judges and Magistrates and Judges of the Subordinate Criminal Courts as may be deemed requisite, to fix such establishment of ministerial officers as may be necessary for the due execution of all the duties committed to those several Courts, and to prescribe the number of offices, the number of officers, their respective salaries, the tenure by which they are to hold office, and such other particulars

Ministerial officers.

as the said Governor in Council may deem proper. Upon the receipt of the instructions of the Governor in Council the Judges of the Criminal Courts shall make the appointments to the several offices of their respective establishments.

VIII.

No person excepted from jurisdiction by reason of place of birth or of descent.

No person whatever shall by reason of place of birth, or by reason of descent, be in any criminal proceeding whatever excepted from the jurisdiction of any of the Criminal Courts.

IX.

High Court and Session Court to have jurisdiction over all offences.

The High Court and Session Court shall have jurisdiction in respect of all offences punishable under the Penal Code.

X.

Exclusive jurisdiction as to certain offences.

The High Court and Session Court exclusively shall have jurisdiction in respect of—

1st. Offences entered in Schedule A. of the Code of Procedure as triable by those Courts only.

2d. The offences punishable under Clauses 364, 365, 366, and 390 of the Penal Code, when the value of the property which is the subject of the offence exceeds 500 rupees.

3d. Offences however punishable under any clause of the Penal Code, charged against public servants of the first four classes described in Clause 14, whether as such public servants or otherwise.

4th. Offences however punishable under any clause of the Penal Code, except Clause 149, charged against the following public servants, as such public servants:

Every head ministerial officer, every record keeper, and every Nazir of a Court of Justice, and every officer of a Court of Justice, whose duty it is, as such officer, to investigate or report on any matter of law or fact;

Every head jailer;

Every darogha of police;

Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of the Government, or to make any survey, assessment, or contract on behalf of the Government; or to investigate, or to report on any matter affecting the pecuniary interests of the Government; or to make, authenticate, or keep any document relating to the pecuniary interests of the Government.

5th. Offences however punishable under any clause of the Penal Code, charged against the following public servants, as such public servants:

Every Juryman;

Every arbitrator to whom any cause has been referred by a Court of Justice.

XI.

Magistrates, their jurisdiction as to offences.

Magistrates are empowered to try all offences not assigned to the exclusive jurisdiction of the High Court or Session Court.

XII.

Subordinate Criminal Courts, their jurisdiction as to offences.

Subordinate Criminal Courts of the first and second classes are empowered to try offences entered in Schedule A. of the Code of Procedure as triable by those Courts respectively.

XIII.

Session Court not to pass sentence in cases punishable with death.

In cases tried by the Courts of Session in which the defendant is convicted of any offence which, by the Penal Code, is punishable with death, the Court shall not pass judgment, but shall refer the case to the High Court, which shall pass judgment thereon.

XIV.

*It shall be competent to a Session Judge, on cause shown, to direct the transfer of any criminal case from any Criminal Court to any other Criminal Court of equal or superior jurisdiction in his district. Session Court may direct transfer of a criminal case.

XV.

Magistrates are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding two years, or to fine exceeding 1,000 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code. Magistrates, their penal jurisdiction.

XVI.

Judges of the Subordinate Criminal Courts of the 1st Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding one year, or to fine exceeding 200 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code. Subordinate Criminal Courts, 1st class, their penal jurisdiction.

XVII.

Judges of the Subordinate Criminal Courts of the 2d Class are empowered to pass sentence in all cases tried by them, provided that they shall not, for any offence, sentence any person to imprisonment for a term exceeding three months, or to fine exceeding 50 rupees; and they may inflict fine together with imprisonment in all cases in which both punishments are authorized by the Penal Code. Subordinate Criminal Courts, 2d class, their penal jurisdiction.

XVIII.

In every case punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of Clauses 51 and 52 of the Penal Code, in awarding the period of imprisonment in default of payment of the fine; provided, however, that in such cases decided by the Magistrate and Subordinate Criminal Courts, the period of imprisonment awarded in default of payment of the fine shall in no case exceed one fourth of the period of imprisonment which such Magistrate or Subordinate Criminal Court is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine. Imprisonment in default of payment of fine.

XIX.

It shall be competent to the Government to direct that any Subordinate Criminal Court shall be authorized to hold the preliminary inquiry into cases triable by the Session Courts, and to commit or hold to bail parties to take their trial before such Courts, and to exercise all the powers necessary for such purposes. Subordinate Criminal Courts may be empowered to prepare cases for trial before the Session Court.

Proposed Code of Procedure for the Courts of Criminal Judicature in Madras and Bombay.

CONTENTS.

CHAPTER I.

Preliminary Rules.

I.

No institution stamp fee, or deposit.

No stamp duty or fee shall be required on the institution of any criminal case, or on the entry of any appeal from the decision or order of any Criminal Court; nor shall duties or fees of any kind be payable in respect of any other proceedings had in any Criminal Court, except such fees or charges as may be set forth in tables to be prepared as provided in the next succeeding article.

II.

Table of fees and charges to be prepared.

A table of fees to be allowed to officers of Court for all and every part of the business to be done by them, and of the charges which may be made by them for copies of papers, and for the expense of serving processes of Court, shall be prepared for all the Criminal Courts comprised in any zillah by the session judge and magistrate of the zillah, under the direction of the High Court, and for the High Court by the judges thereof. A copy of the table of fees and charges so prepared, which may be applicable to any Criminal Court, shall, after they shall have received the sanction of the Governor in Council, be hung up in some conspicuous part of the Court. And it shall not be lawful for any officer of the Court to demand any greater or other fee or reward for the business done by him than such fees or charges as may be set forth in such table.

III.

All complainants and witnesses shall be examined without oath or affirmation or any warning as a necessary preliminary to their preferring complaints or giving evidence, and they shall, upon such examination, be bound to speak the truth as they would have been bound by an oath, or a sanction tantamount to an oath.

Complainants and witnesses to be examined without oath, affirmation, or warning.

IV.

No person whatever shall, by reason of place of birth, or by reason of descent, be excepted from the rules of Criminal Procedure.

No person excepted from Criminal Procedure by reason of place of birth or of descent.

CHAPTER II.

Obtaining a Summons or Warrant.

V.

Where an offence has been committed, or is suspected to have been committed, the proceeding, in order to compel the party known or suspected to have committed such offence to appear for the purpose of preliminary inquiry concerning the same, may be by summons or arrest.

Proceeding to compel appearance.

VI.

The proceeding by summons may be in the cases and shall be subject to the rules herein-after contained.

Summons.

VII.

The proceeding by arrest may be either,—

Arrest.

1. By warrant;
2. Or by a private person without warrant;
3. Or by an officer without warrant.

VIII.

A summons, or a warrant of arrest, may be obtained on such complaint as is mentioned in the next succeeding article.

Complaint.

IX.

Every complaint made before a magistrate or head officer of police, in order to the issuing of a summons or a warrant against a person accused of any offence, either directly or on suspicion, if not written shall be forthwith reduced into writing, and shall be signed by the complainant, and also by the magistrate or head officer of police issuing the summons or warrant.

To be reduced into writing and signed.

By the term "Head Officer of Police" throughout this code of procedure is meant the head officer of a police division, as defined in Article XXVII.

X.

Upon such complaint duly made before a magistrate, he shall, in case it appear to him that there is sufficient ground for proceeding, issue his summons or warrant for causing the person accused to appear before himself or some other magistrate or Court having jurisdiction; and if in the judgment of such magistrate there be no sufficient ground, he shall dismiss the complaint, whether it be direct or on suspicion only.

Magistrate, how to proceed on complaint.

XI.

Upon such complaint duly made before a head officer of police, he shall, in case it appear to him that there is sufficient ground for proceeding, and that the immediate apprehension of the accused is necessary to the ends of justice, issue his summons or warrant for causing the person accused to appear before himself; and if in the judgment of such head officer there be no sufficient ground,

Head officer of police how to proceed on complaint.

or the immediate apprehension of the accused is not necessary to the ends of justice, he shall abstain from issuing any process, and shall submit the complaint for the orders of the magistrate.

XII.

Summons, what it is to contain, and how to be directed.

Every summons issued by a magistrate or head officer of police to a person so accused shall be in writing, under the hand and seal of the magistrate or head officer of police issuing it; shall show his office; that the summons is made on a complaint duly made of an offence committed, or suspected to have been committed; shall be directed either to the person accused by such complaint, or some other person; if directed to the person accused it shall, if issued by the magistrate, direct him to appear before the magistrate issuing such summons, or some other magistrate or Court as aforesaid, at a time and place specified; and if issued by a head officer of police, to appear before such head officer at a time and place specified; and if directed to any other person it shall require such other person to summon the person accused so to appear.

XIII.

Summons, how to be served.

If such summons be directed to the person accused, it may either be served on him personally or left with some adult member of his family.

XIV.

Notwithstanding summons, warrant may issue in certain cases.

A magistrate or head officer of police may, notwithstanding such summons, either before the appearance of the person accused, as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person in all cases in which he might so have done had no such summons been issued.

XV.

Warrant when grantable for an offence committed beyond local jurisdiction.

A magistrate of one district or head officer of one division may grant a warrant for the apprehension of a suspected offender within that district or division, as the case may be, in respect of an offence of which the law takes cognizance, committed in a different district or division, or on the high seas, or in a foreign country.

XVI.

Where an offence may be investigated and tried in one of two or more jurisdictions.

When a person or several persons shall be accused of the commission of any offence, by reason of any things which have been done, or by reason of any thing or things which have been done and consequence or consequences which have occurred, every such offence may be inquired of and determined, and every such offender prosecuted and punished, in any district or jurisdiction in which any such thing shall have been done, or any such consequence shall have occurred.

XVII.

Abetment.

The previous abetment of an offence, wherever such abetment may have taken place, may be inquired of and determined in any place or district in which that offence may be inquired of and determined, and by any Court which has jurisdiction to try that offence, as though the previous abetment had been committed at the same place at which that offence was wholly or partly committed.

XVIII.

Abetment.

Provided, that such abetment may be inquired of and determined in any district within which the abettor has done anything for abetting the commission of that offence.

XIX.

Offence committed on boundary.

Where any offence shall be committed on the boundary or boundaries of two or more districts or divisions, or within the distance of 500 yards of any such boundary or boundaries, or shall be begun in one district or division and completed in another, every such offence may be inquired of and determined in any of the said districts or divisions in the same manner as if it had been actually and wholly committed therein.

XX.

During journey, &c.

Where any offence shall be committed on any person or on or in respect of any property in or upon any coach, cart, or other carriage, or upon any beast of

burden employed in any journey, or shall be committed on any person or on or in respect of any property on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, such offence may be inquired of and determined in any district or division through any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had been actually committed in such district or division; and in all cases where the side, middle, or other part of any highway, or the side, bank, middle, or other part of any such river, canal, or navigation, shall constitute the boundary of any two districts or divisions, such offence may be inquired of and determined in either of the said districts or divisions through or adjoining to or by the boundary of any part whereof such coach, cart, carriage, beast of burden, or vessel shall have passed in the course of the journey or voyage during which such offence shall have been committed, in the same manner as if it had actually been committed in such district or division.

XXI.

Whosoever shall fraudulently receive, or fraudulently have in possession, any stolen property, knowing the same to be stolen property, may be prosecuted and punished in any district or place in which he shall have or shall have had such stolen property in his possession, or in any district or place in which any person by whose offence that property came to be stolen property may be prosecuted and punished. Receiving, &c. stolen property.

XXII.

Whosoever shall commit any offence by unlawfully receiving or having in possession any moveable property, knowing the same to have been unlawfully taken, obtained, or converted, may be prosecuted and punished in any district or place in which he shall have or shall have had such property in his possession, or in any district or place in which any person who unlawfully took, or obtained, or converted such property, may be prosecuted and punished for any offence committed thereby. Unlawfully receiving property.

XXIII.

Any offender who shall escape from any custody in which he is lawfully detained in pursuance of a sentence of a Court of Justice, or by virtue of a commutation of such sentence, may be prosecuted and punished either in the district where he shall be apprehended and retaken, or in the district in which the said offence shall have been committed. Escape from lawful custody under sentence.

XXIV.

Any offender who shall return from transportation or banishment, the term of such transportation or banishment not having expired, and his punishment not having been remitted, may be prosecuted and punished either in the district or place where he shall be apprehended, or in that in which he was formerly tried. Returning from transportation or banishment.

XXV.

Any person who shall commit any offence by forgery, or by using as genuine any document which he knows to be forged or falsified by forgery, may be prosecuted and punished in any district or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that district or place. Forgery.

XXVI.

In the preceding articles, and any other article of this Act, wherever the district or other place or the Court in or before which any offence is to be inquired of and determined, or any offence is to be prosecuted and punished, is mentioned, the term "inquired of" shall be deemed to comprise every proceeding preliminary to trial; the term "determined," to comprise trial, and every subsequent proceeding, including the punishment of the offender; and the terms "prosecuted and punished," to comprise every proceeding, whether preliminary or subsequent to trial, or upon such trial; unless in any such case there be something in the subject or context repugnant thereto. Definition of certain terms.

XXVII.

What is a district, and what a division.

The local jurisdiction of the magistrate of a zillah or district shall for the purposes of this Act be deemed a district; and the local jurisdiction of a moonsiff or head officer of police be deemed a division; provided that nothing herein contained shall be held as authorizing a police officer, except under the special authority of the magistrate, to inquire into any of the offences described in the provisions of the Penal Code specified in Article LXXXII.

We have allowed this article, which serves the purpose of an interpretation clause of terms of frequent occurrence in the code, to stand as in our first report. The extent of territory under the jurisdiction of a magistrate is in Bengal usually termed a district, that under a darogha or moonsiff a division. It is different in Madras and Bombay. In those presidencies the portion of country under a tahsildar or moonsiff is termed a district. We think it will be found expedient to use the terms uniformly throughout the presidencies.

XXVIII.

Madras [*Bombay*] a district.

The local jurisdiction of the magistrates of Madras [*Bombay*] shall for the purposes of this Act be deemed a district.

CHAPTER III.

Of the Warrant and its Execution.

XXIX.

Warrant to bear the name of grantor.

The warrant shall be in the name of the officer who grants it.

XXX.

Form of warrant.

Every such warrant shall be in writing; shall be directed to some person or persons by name or by official description (and in the latter case, either to some particular officer, or to all or some one or more of that class or description); shall specify the person to be arrested by name or by such other description as may be sufficient to distinguish him; shall order that such person be arrested; shall specify the authority before whom such person after arrest shall be taken; shall state, as the cause of arrest, some offence committed or suspected to have been committed in respect of which the magistrate or other officer has jurisdiction to issue such warrant; shall show the person who grants it to be a magistrate or other officer authorized to issue such warrant; shall state the time of making it; show the place where it is granted, either by statement in the body or in the margin of the warrant; and be signed and sealed by the magistrate or other officer who grants it.

XXXI.

Warrant to several persons, jointly and severally.

A warrant directed to several persons jointly and severally may be executed by any one of them.

XXXII.

To several persons jointly.

A warrant directed to several persons jointly, without words excluding the execution by one or a part only of those mentioned, may be executed by any one or by a part only of them.

XXXIII.

To a head officer of police or Nazir.

A warrant directed to a head officer of police or to a nazir may be executed by any officer subordinate to such head officer or nazir respectively.

XXXIV.

Officers issuing a warrant may personally superintend its execution.

A magistrate or other officer authorized to issue a warrant or other criminal process may attend personally for the purpose of seeing that the same be duly executed, and may adopt or direct any legal measures that may be necessary for the due execution thereof.

XXXV.

Warrant directed to a person not an

A warrant directed to any other person than an officer of police or the nazir of a Court is to be executed by that person; provided nevertheless,

that any other person may, in the presence or out of the actual presence of one authorized to execute a warrant, aid him in executing the same, if the person so authorized be near at hand and acting in the execution of the warrant. officer of police or nazir.

XXXVI.

Every person is bound to assist a magistrate or police officer demanding his aid in the taking of an offender, preventing a breach of the peace, the suppression of a riot, or the taking of the rioters. All persons bound to assist in certain cases.

XXXVII.

A warrant issued by any magistrate must be executed (unless it be specially otherwise provided) within the jurisdiction of the magistrate from whom it issued, or of the magistrate by whom it has been duly indorsed for execution. Where a warrant of a magistrate must be executed.

XXXVIII.

In case any person against whom a warrant shall be issued by any magistrate shall escape, go into, reside, or be, or be supposed to be, in any place out of the jurisdiction of the magistrate granting such warrant, the magistrate of the place into or in which such person shall escape, go, reside, be, or be supposed to be, shall indorse his name on such warrant, which shall be a sufficient authority to the person or persons bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute such warrant within the jurisdiction of the magistrate who indorsed such warrant, and to apprehend and carry such person before the magistrate who indorsed such warrant, or before the magistrate of the district where the offence was committed. In case such person be carried before the magistrate who indorsed the warrant, and the offence with which he is charged is bailable in law, he shall be proceeded with in the manner herein-after mentioned in Article CXXI. or Article CLXXXII. If the offence be not bailable, he shall be forwarded to the magistrate of the district in which such offence was committed. Warrant indorsed in another jurisdiction.

XXXIX.

Provided that it shall be competent to a magistrate issuing a warrant for the arrest of a person out of his jurisdiction to direct the warrant to the magistrate of the district in which such person is, or is supposed to be, and to transmit the same by post. On the receipt of the warrant by the magistrate to whom it is directed, he shall indorse his name on such warrant, and enforce its execution in the same manner as if the warrant had originally issued from himself. On such person being apprehended, and carried before the magistrate who indorsed the warrant, he shall be dealt with as provided in the last preceding article. Warrant to be indorsed may be sent by post.

XL.

If a person for whose apprehension a warrant has been granted by a magistrate under the provisions of Article XV. is suspected of an offence committed in a different district, the magistrate granting the warrant shall, unless he is authorized by any law to complete the inquiry himself, send the person arrested to the magistrate of the district in which the offence was committed, or take bail for his appearance before such magistrate if the offence of which he is suspected is bailable in law; and in all other instances the magistrate shall report the case for the orders of the High Court. Magistrate how to proceed on arrest under his own warrant for an offence committed out of his jurisdiction.

XLI.

If the warrant under Article XV. shall have been granted by a head officer of police, the head officer of police shall send the person arrested to the magistrate, to whom such head officer of police is subordinate, unless the offence of which the person arrested is suspected shall have been committed in another division of the district in which the division of the head officer of police who granted the warrant is comprised; in such case the head officer of police who granted the warrant shall send the person arrested to the head officer of police of the division in which such offence was committed. Head officer of police how to proceed in such cases.

XLII.

A warrant issued by a police officer must be executed (unless it be otherwise specially provided) within the jurisdiction of the officer who issued it. Where a warrant of a police officer must be executed.

XLIII.

When a warrant of arrest may be executed.

An arrest on a warrant for any of the offences specified in Schedule A. of this Code of Procedure as not bailable offences may be made on any day, and at any time of the day or night. It shall be at the discretion of the magistrate to direct that an arrest on a warrant in any other case may be made on any day, and at any time of the day or night.

XLIV.

Warrant, how to be executed.

In making an arrest the officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by words or actions.

XLV.

No unnecessary restraint.

After arrest the prisoner shall not be subjected to any more restraint than such as may be necessary to prevent his escape.

XLVI.

Notification of purpose to act under the warrant.

One executing or attempting to execute a warrant of arrest is bound to notify to the person against whom such warrant is directed, that he purposes to act under the authority of that warrant.

XLVII.

Notification of substance of warrant.

An officer or other person executing a warrant of arrest must notify the substance of the warrant, and show the warrant, if sight of it be demanded.

XLVIII.

Taking and refusing to give up a warrant.

If on a warrant being shown any person take hold of it, and illegally refuse to give it up to the officer or other person authorized to execute it, such officer or other person may retake it by force, provided he use no greater degree of violence than is necessary for the purpose.

XLIX.

Resisting an endeavour to arrest.

If, after notice by one authorized by warrant to arrest another of his intention to arrest him, the person against whom such warrant is issued shall forcibly resist the endeavour to arrest him, the person so authorized is bound to use all such means as may be necessary to effect an arrest and prevent escape.

L.

Breaking of outer door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any outer door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LI.

Officer, &c. breaking out to liberate himself.

An officer or other person having lawfully entered a dwelling house for the purpose of executing criminal process, or of arresting any person under any of these articles, may lawfully break out of such house when it is necessary for his own liberation; and any officer may lawfully break any outer or inner door or window of a dwelling house in order to liberate any officer or other person who, having entered for such purpose, is unlawfully detained within such dwelling house.

LII.

Breaking of inner door or window.

Any person authorized by a warrant to arrest any person accused of any offence for which a warrant may issue on complaint, may (in the presence of two respectable witnesses) break open any inner door or window of a dwelling house, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LIII.

If information be received that a person accused of any offence for which a warrant may issue on complaint, has concealed himself in a zenanah or female apartment in the actual occupancy of women, the officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused, and shall endeavour to ascertain, by the means of two respectable women unconnected with the family or with each other, whether the person against whom the warrant has been issued be really concealed in the zenanah; in which case, and if such person shall not deliver himself up, the police officer or other person authorized to execute the warrant may, in the presence of two or more respectable residents of the place, break open the zenanah, and execute the process intrusted to him, giving notice at the same time to any women in the zenanah that they are at liberty to withdraw.

Breaking open a *zenanah* or female apartment.

LIV.

It shall be at the discretion of the magistrate to direct, in any particular case, that a warrant of arrest shall be executed as provided in Articles L., LII., and LIII., for any other offence than the offences for which a warrant may issue on complaint.

Breaking of doors, &c. for offences not previously provided for.

LV.

After arrest made, the officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested to the magistrate or other authority mentioned in the warrant.

Party arrested to be brought immediately to the authority mentioned in the warrant,

LVI.

If, after arrest made, circumstances render it impracticable to bring the person arrested immediately before the magistrate, the officer or other person executing the warrant shall detain the person arrested in custody in the meantime, and bring him before the magistrate as soon as his doing so shall become reasonably practicable.

or as soon as practicable.

LVII.

No officer or other person, after the arrest of any suspected person, is to offer to him any inducement, by threat or promise or otherwise, to make any disclosure, but shall, when necessary, apprize him of the cause of arrest, and leave him free to speak or keep silence; and no such officer or other person shall after such arrest prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

No threat, promise, or caution, as to disclosure by party arrested.

CHAPTER IV.

Of Arrest without Warrant.

LVIII.

A police officer or other person who sees any offence committed for which a warrant may issue on complaint, may, without warrant, arrest the offender.

Arrest on view.

LIX.

A police officer may, without warrant, arrest of his own authority a person against whom a reasonable complaint of an offence for which a warrant may issue on complaint is made, or who may be found with stolen goods in his possession.

On complaint, or finding with stolen goods.

LX.

A police officer, or other person, may, without warrant, arrest a proclaimed offender, or a person against whom a hue and cry has been raised of his having been concerned in a recent offence.

A proclamed offender: hue and cry.

LXI.

A party liable to arrest concealing himself.

If a person liable to arrest without warrant under the foregoing rules, shall enter into and conceal himself in a dwelling house, the person who might otherwise have arrested shall take such precautions as may be necessary to prevent the escape of the accused, and send immediate information to the magistrate or head officer of police; but no house shall be broken into for the purpose of arresting any person without a warrant.

LXII.

Breach of the peace.

A police officer may, of his own authority, interpose for the prevention of a breach of the peace committed or attempted to be committed in his view; and in the event of disobedience or resistance may, without warrant, arrest the offender.

LXIII.

Obstruction of a police officer in his duty.

A police officer may apprehend any person who obstructs him while in the execution of his duty, and carry him before the magistrate, or before the head officer of the police division.

LXIV.

When it is not necessary to notify cause of arrest.

It is not necessary to notify the cause of arrest where the person is in the actual commission of any offence, or where fresh pursuit is made after any such person, who, being disturbed, makes his escape.

LXV.

Party arrested to be taken immediately before the proper authority.

A police officer or other person, having arrested a person for an offence, is to take or send him before the magistrate or the head officer of the police division, without unnecessary delay.

LXVI.

Arrest for an offence commited in the presence of a magistrate.

Where any offence is committed in the presence of any magistrate, he may by word of mouth command any other person to arrest the offender, and may thereupon commit him, or, at his discretion, where the offence is bailable, may admit him to bail.

CHAPTER V.

Of Escape and Re-taking.

LXVII.

Person arresting may retake on escape, and deal with the party arrested as on original taking.

If a person lawfully arrested on a criminal information shall escape or be rescued, it shall be lawful for the person from whose custody such prisoner so escaped or was rescued to make fresh pursuit, and retake him in any place, either within or without the jurisdiction where he was so in custody, and on any day, and at any time of the day or night, and to deal with him as he might have done on an original taking.

LXVIII.

May adopt the same measures as on original taking.

In order to retake any person, within the meaning of the last preceding article, the person so making fresh pursuit as therein is mentioned may adopt the same measures as he might have done on the original taking.

CHAPTER VI.

Of Search Warrant.

LXIX.

When grantable by a magistrate.

Whenever a magistrate, having jurisdiction in respect of a supposed offence, shall consider that the production of any thing or things will be essential to the conduct of an inquiry into such offence, he may grant his warrant to search

for such thing or things, and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in any dwelling or dwellings, place or places. In such case the magistrate shall, if he think right, specify in his warrant the dwelling or dwellings, place or places, or part or parts thereof, to which only the search shall extend.

LXX.

How to be directed.

The magistrate shall direct his warrant to the head officer of police within whose jurisdiction the dwelling or dwellings, place or places, required to be searched, are situated, or to any other public and registered officer of police to whom the magistrate may think fit to commit the execution of that duty. A warrant directed to a head officer of police may, in the event of the head officer not being able to proceed in person, be executed by any officer subordinate to such head officer, above the rank of peon.

LXXI.

When a magistrate may require a magistrate of another district to issue a search warrant.

A magistrate may require the magistrate of another district to issue a search warrant in any case in which he may issue such warrant himself.

LXXII.

When a magistrate may grant a search warrant out of his jurisdiction.

In cases of emergency, a magistrate may grant his warrant for the search of any thing or things concealed, or supposed to be concealed, in a dwelling or dwellings, place or places, out of his jurisdiction, the production of such thing or things being essential to the conduct of an inquiry into an offence committed within his jurisdiction. When a magistrate grants a warrant under this article, he shall inform the magistrate of the district in which the dwelling or dwellings, place or places, to be searched, are situated.

LXXIII.

Search warrant when grantable by a head officer of police.

Whenever a head officer of police shall consider that the production of any thing or things will be essential to the conduct of an inquiry into any offence which he is authorized to inquire into, he may grant his warrant to search for such thing or things in any dwelling or dwellings, place or places, within his division, which shall be specified in his warrant; and it shall be lawful for the officer legally charged with the execution of such warrant to search for such thing or things in such dwelling or dwellings, place or places.

LXXIV.

How to be executed.

The head officer of police shall, if practicable, conduct the search in person; but if unable to proceed in person, shall direct his warrant to any police officer of his division above the rank of peon.

LXXV.

When a head officer of police may require a head officer of police of another division to issue a search warrant.

A head officer of police of one division may require the head officer of police of another division, whether subject to the same magistrate as himself or to the magistrate of any other district, to issue a search warrant in any case in which he may issue such warrant himself.

LXXVI.

Representations regarding anything for which search is to be made to be sent to magistrate.

The head officer of police, when not specially instructed by the magistrate, shall transmit all representations made to him regarding the receipt or concealment of any thing or things the production of which is essential to the conduct of an inquiry into an offence, at or before the time when he proceeds to the search, for the information of the magistrate, and for any orders which he may deem it necessary to issue on the subject.

LXXVII.

When the search is to be made.

The search shall be made in the daytime, except in cases of great emergency, and where the information is positive, and not on suspicion only, when it may be made either in the daytime, or in the night-time.

LXXVIII.

Breaking of door.

If the door be shut, the person charged with the execution of the warrant may proceed to break open the door, if, after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

LXXIX.

Breaking of a zenanah or female apartment.

If the place ordered to be searched is a zenanah or female apartment in the actual occupancy of women, the officer charged with the execution of the warrant shall give notice to any women in the zenanah that they are at liberty to withdraw; and, after giving such notice, and allowing a reasonable time for the women to withdraw, such officer may enter the zenanah for the purpose of completing the search, using at the same time every precaution consistent with these provisions for preventing the clandestine removal of property.

LXXX.

Search to be made in the presence of witnesses. Occupant of the place searched may attend.

The search is to be made in the presence of three or more respectable inhabitants of the place in which the dwelling or dwellings, place or places searched, may be situated, and such persons shall subscribe their names to the report made to the magistrate; and the occupant of the house, or owner of the house, or some person in his behalf, shall in every instance be permitted to attend during the search.

LXXXI.

Property, &c. to be sent to the magistrate.

All property which is claimed as having been stolen, as well as all property suspected to have been stolen, found on persons accused of robbery or theft, or which is seized by police officers under suspicious circumstances, as also anything the production of which is essential to the conduct of an inquiry into an offence, shall be forwarded without delay, together with a despatch, to the magistrate. A copy of the despatch being registered, the original is to be given to the officer charged with the conveyance of the property, to be delivered to the nazir, or other proper officer, on his arrival at the station of the magistrate.

CHAPTER VII.

Preliminary Inquiry by the Police.

LXXXII.

Offences into which the police officers may not inquire without special authority.

A head officer of police shall not inquire into any of the following offences punishable under the Penal Code, unless specially authorized by the magistrate to do so, viz.:

Offences under Chap. VIII., provided that it shall be competent to a darogha to apprehend and send to the magistrate any person who may be found in his division in the commission of the offence punishable under clause 150.

Offences under Chap. IX., except the offences punishable under clauses 164, 166, 168, 171, 173, 175, and 182; provided that it shall be competent to a darogha to inquire into any offence under Chap. IX., committed in contempt of his own authority.

Offences under Chap. X., except the offences punishable under clauses 201, 203, 204, and 205.

Offences under Chap. XI., clauses 211, 216, 225, 226, 227, and 228.

Offences under Chap. XIII.

Offences under Chap. XIV., except the offences punishable under clauses 257, 265, 267, 269, 270, and 273.

Offences under Chap. XV.

Offences under Chap. XVI.

Offences under Chap. XVII.

Offences under Chap. XVIII., clauses 312, 313, 318, 325, 332, 333, 334, 335, 336, 337, 342, 347, 348, 350, 351, 352, and 358.

Offences under Chap. XIX., clauses 369, 370, 373, 374, 384, 385, 387, 388, 394, 395, 396, 397, 398, 400, 401, 402, 403, 404, 405, 406, and 425.
Offences under Chap. XX., clauses 453 and 454.
Offences under Chap. XXI.
Offences under Chap. XXII.
Offences under Chap. XXIII.
Offences under Chap. XXIV.
Offences under Chap. XXV.
Offences under Chap. XXVI.

LXXXIII.

Upon complaint duly made before a head officer of police having jurisdiction in the case, against any person for committing any offence, other than the offences described in the provisions of the Penal Code specified in the last preceding article, and which offence is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such head officer to issue his warrant to apprehend such person, and to cause him to be brought before such head officer.

When the head officer of police may issue his warrant.

LXXXIV.

Provided, that in all cases it shall be lawful for such head officer before whom such a complaint is made, instead of issuing his warrant in the first instance to apprehend the person so complained against, to issue his summons, recording his reason for so issuing his summons, directed to such person, requiring him to appear before such head officer.

May issue summons instead of warrant.

LXXXV.

Upon a complaint duly made before a head officer of police having jurisdiction in the case, against any person for committing any offence into which he is authorized to inquire, and which is punishable with imprisonment for a period not exceeding six months, such head officer shall issue his summons to such person, requiring him to appear before such head officer.

When head officer of police shall issue summons.

LXXXVI.

In the event of its appearing to the head officer of police that for any special reason the issue of process for causing the attendance of the accused should be stayed until the case be reported for the orders of the magistrate, such report shall be made without delay, and the issue of process against the accused in the meantime suspended. On the receipt of the head officer's report, it shall be at the discretion of the magistrate, if he is of opinion that there are grounds for proceeding with the case, to direct the head officer to proceed with it, or to proceed with it as if the complaint had been made before himself.

When the head officer of police may stay issue of process.

LXXXVII.

Upon the issue of process for causing the attendance of the accused, the head officer of police shall at the same time issue summonses for the attendance of any persons who appear from the statement of the person making the complaint to be acquainted with the facts and circumstances of the case.

Witnesses to be summoned.

LXXXVIII.

Nothing contained in the foregoing articles shall be construed to prevent a head officer of police from proceeding in person, or deputing a fit person from among the officers acting under him, to ascertain on the spot the facts and circumstances of any case into which he is authorized to inquire.

Head officer of police may proceed in person, or depute an officer to investigate.

LXXXIX.

It shall be lawful for the head or other officer of police to pursue persons accused of the offences referred to in Article LXXXIII. into the jurisdiction of other head officers of police whether subject to the same magistrate as himself or to the magistrate of any other district.

Police may pursue offenders into other jurisdictions.

T. 4

XC.

Examination of witnesses.

The examination of witnesses by the police shall be taken in the presence of the head officer, or, in the event of his absence, in the presence of any officer above the rank of peon, and the substance of any material information obtained from them shall be reduced to writing, not in the form of question and answer, but in that of a brief narrative, which shall be signed by the person deposing, and transmitted to the magistrate, as herein-after provided, under the signature of the police officer by whom the inquiry may have been made.

XCI.

Police officers not to examine the accused.

It shall not be competent to a head or other officer of police to examine a person accused of a criminal offence, or to reduce to writing any admission or confession of guilt which he may propose to make.

XCII.

Inquiry by the police.

The head or other officer of police shall complete the inquiry with as little delay as possible, and if the head officer himself have made the inquiry, he shall forward the accused to the magistrate, under the custody of one or more peons, provided the evidence is such as to warrant that course, and the offence be not bailable, and shall bind over the prosecutor and witnesses to appear on or before a fixed day before the magistrate of the district. If a subordinate police officer have made the inquiry, he shall submit his proceedings to the head officer, who shall then proceed as if he had made the inquiry himself.

XCIII.

Accused not to be detained by the police beyond 48 hours, without special authority.

Provided, that it shall not be lawful for the head or other officer of police to detain the accused in custody, without the special orders of the magistrate, for a longer period than forty-eight hours; and provided also, that it shall be competent for a head or other officer of police, on his being satisfied that there are grounds for believing that the accusation is well founded, to forward the accused to the magistrate at any period of the inquiry before the expiration of forty-eight hours from the apprehension of the accused. The head officer shall forward with the accused a short despatch stating the offence for which the accused has been arrested.

XCIV.

Head officer how to proceed in cases of deficient evidence.

If it shall appear to the head officer of police that there is not sufficient evidence to warrant the transmission of the accused to the magistrate, he shall release the accused on bail, or on his own recognizance, to appear when required, and submit his proceedings for the orders of the magistrate.

XCV.

Proceedings of the head officer, of what to consist.

In all cases, in submitting his proceedings to the magistrate, the head officer of police shall forward the statement of the person complaining and the depositions of the witnesses, with a brief report of the names of the parties, the nature of the complaint, and the names of the witnesses, without any recapitulation of evidence or expression of opinion as to the guilt of the accused, together with any weapon or property which it may be necessary to produce before the magistrate. The head officer shall further state whether he has forwarded the accused in custody, or released him on bail, or on his own recognizance.

XCVI.

Bail.

Persons accused of the commission of any of the offences entered in the third column of Schedule A. as not bailable, shall not be admitted to bail, provided that there appear reasonable grounds for believing that such persons have been guilty of the offence imputed to them; but in all cases of persons accused of any other offences, if sufficient bail be tendered for appearance before the magistrate, the head officer of police shall accept such bail, and immediately release the party apprehended.

XCVII.

In cases of manifest necessity, when the head officer of police may be apprehensive of danger to the public peace by the enlargement of a person arrested for rioting or other bailable offence, without security being taken for his peaceable conduct, the person so arrested shall be required, in addition to the bail for his appearance, to furnish security for keeping the peace; and the surety or sureties shall execute a recognizance in an amount to be regulated by the circumstances of the case and the condition of the person executing the same. In default of his furnishing the required security, the accused shall be forwarded under custody to the magistrate.

When security for keeping the peace to be required.

XCVIII.

The officers of police shall report to the magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons may have been admitted to bail or otherwise; and no person who has been apprehended shall be discharged, except on bail, or on his own recognizance, or under the special order of the magistrate.

Police to report all apprehensions.

XCIX.

The bail to be taken for appearance before the magistrate, in pursuance of Article XCVI. shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty to produce the defendant before the magistrate on or before a fixed day, to answer the complaint.

Bail not to be excessive. Terms of security.

C.

Prosecutors and witnesses, whose attendance may be necessary at the Criminal Courts, shall execute recognizances before the police officers, to appear before the magistrate on a specific day, which shall be the day whereon the accused may be bound to appear, if he shall have been admitted to bail, or on the day on which he may be expected to arrive at the magistrate's place of residence, if he is to be forwarded thither under custody. The police officer in whose presence the recognizance may be executed shall forward it with his report to the magistrate, and shall deliver to the prosecutor or witness a despatch, which the prosecutor or witness shall be required to deliver in person to the magistrate or the nazir of his court, unaccompanied by any officer of police.

Prosecutors and witnesses to execute recognizance to appear before the magistrate.

CI.

The police officers shall not subject witnesses to any restraint or unnecessary inconvenience, nor require them to give any other security for their appearance than their own recognizances; but if any witness shall refuse to attend, or to execute the recognizance directed in the last preceding article, it shall be competent to the head officer of police to forward such witness under custody to the magistrate.

Witnesses not to be subjected to restraint. Recusant witness may be forwarded in custody.

CII.

The powers to be exercised by the head officer of police under the foregoing rules shall be exercised, in the event of his absence or illness, by the head police officer present at the police station above the rank of peon.

By whom the powers of the head officer of police may be exercised in his absence or illness.

CIII.

All processes in criminal cases cognizable by the police officers shall be served by the peons at the police station, without any charge to the parties or witnesses.

Service of process issued by the police.

CIV.

the Penal Code specified in Article LXXXII., except under the special orders of the magistrate. But it shall be at the discretion of the magistrate to issue such orders to the officers of police, in regard to the investigation of criminal cases, as he shall think proper, and such officer shall be bound to obey the orders of the magistrate.

Magistrate may direct investigation at his discretion.

CV.

How head officer of police is to proceed in regard to cases triable by the Subordinate Criminal Courts.

When a Subordinate Criminal Court has been authorized to receive cases coming within its jurisdiction on the report of a police officer, the head officer of police shall forward the accused and submit his proceedings to such court, and shall bind over the prosecutor and witnesses to appear before the same.

CVI.

Rules relating to the police not to apply to Calcutta.

The foregoing rules, from Article LXXXII. inclusive, shall not be held to apply to the town of Madras [*town and island of Bombay*].

CHAPTER VIII.

Of Contempts and Disobedience of Orders.

CVII.

Disobedience of orders, &c. under Clause 149 of the Penal Code, how punishable.

Any Judge, or Court of Justice, or Magistrate shall be competent to take cognizance of offences falling under Clause 149 of the Penal Code, committed by inferior public servants attached to their offices, and to punish the persons committing them as therein authorized.

The offence is that of a public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.

CVIII.

Contempt of Court under Clause 197.

When any such offence as is described in Clause 197 of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the said clause.

The offence is that of insulting or interrupting a Court of Justice.

CIX.

Contempt of lawful authority under Chapter IX.

When any of the offences described in Chapter IX. of the Penal Code is committed in contempt of the lawful authority of a Judge or Court of Justice, or of a Magistrate, or any officer vested with the powers of a Magistrate, acting as such in any stage of a judicial proceeding, it shall be competent to such Judge, or Court, or Magistrate to punish the same as for a contempt of Court, and to adjudge the offender to punishment as authorized by the clause applicable thereto.

Chapter IX. of the Penal Code is entitled "Contempts of the lawful Authority of Public Servants." The rules of this Chapter of the Code of Procedure are confined to Judges, Courts of Justice, and Magistrates; the provisions of Clause 149 and of Chapter IX. of the Penal Code are more general; but it has been considered expedient to leave to the Government of India the extension of these or similar rules to other public servants.

CX.

Ordinary powers of punishment not to be exceeded. Punishment may be remitted on submission of the offender.

Provided that no Magistrate or Judge of a Subordinate Criminal Court shall exceed his ordinary powers of punishment in fixing the measure of punishment for any of the offences referred to in the three last preceding articles; and provided also, that where a person has been sentenced to punishment under the provisions of the last preceding article, for refusing or omitting to do anything which he was required to do, it shall be competent to the Judge, Court of Justice, or Magistrate, to remit the punishment, on the submission of the offender to the order or requisition of such Judge, Court of Justice, or Magistrate.

CHAPTER IX.

Criminal Charges by the Advocate General.

CXI.

It shall be competent to the Advocate General, at his discretion, to file a criminal charge for any offence, in any criminal court; also to withdraw such charge, and to file another.

Advocate General may file criminal charges.

CXII.

The rules relating to the description of the offence in the case of charges by the Magistrate shall be applicable to criminal charges filed by the Advocate General.

To follow the rules relating to charges.

CHAPTER X.

Prosecutions in certain Cases.

CXIII.

Charges of offences punishable under Chapters V., VI., XI., and XVI. of the Penal Code shall not be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Governor General in Council, or by order of, or under authority from, a public officer empowered by the Governor General in Council to direct or authorize such prosecution, or unless instituted by the Advocate General.

Prosecutions for certain offences not to be instituted but under authority of Government, or of a duly empowered officer.

The offences are as follow :—
Chapter V. Offences against the state;
" VI. Offences relating to the army and navy;
" XI. Offences relating to the revenue;
" XVI. Illegal entrance and residence into the territories of the East India Company.

CXIV.

In cases of contempt of the lawful authority of public servants, and other offences against public servants, as such, described in Chapter IX. of the Penal Code, except the offence described in Clause 186, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the public servants concerned, except when they are inferior ministerial servants, in which case the prosecution shall not be instituted but with the sanction of their official superiors.

Prosecution for certain offences under Chapter IX. of the Penal Code not to be instituted but with the sanction of the public servants concerned.

CXV.

In cases of offences against public justice, described in Clauses 190, 191, 192, 193, 194, 195, 196, and 197 of Chapter X. of the Penal Code, prosecutions shall not be instituted in the Criminal Courts but with the sanction of the Court of Justice, Judge, or Magistrate, before which or whom, or against which or whom, such offence was committed.

For certain offences under Chapter X. of the Penal Code, but with the sanction of the authority before which the the offence was committed.

CXVI.

When a Court of Justice, Judge, or Magistrate is of opinion that there is sufficient ground for bringing any person to trial on a charge of any of the offences referred to in the last two preceding articles, the Court, or Judge, or Magistrate, after making such preliminary inquiry as may be necessary, may send the case for investigation to the Magistrate, who shall proceed to inquire into the case, and pass such orders thereon as he may deem proper: Provided, that it shall be competent to the High Court or a Court of Session to charge a person for any such offence committed before it, or under its own cognizance, and to try such person upon its own charge.

Mode of proceeding in cases mentioned in the two last preceding articles.

CHAPTER XI.

Of preliminary Inquiry by the Magistrate in Cases triable by the High Court or Session Court.

Complaint and issuing of Process for causing the Attendance of the Accused.

CXVII.

Magistrate may issue his warrant.

In all cases where a complaint shall be made before a magistrate having jurisdiction in the case that any person has committed, or is suspected to have committed, any of the offences specified in Schedule A. as triable exclusively by the High Court or Court of Session, or which, in the opinion of the magistrate, is one that ought to be tried by the High Court or Court of Session, it shall be lawful for such magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint; provided also, that in any case which is triable exclusively by the High Court or Court of Session under the provisions of Clauses 3, 4, and 5 of Article X. of the rules relating to the "Criminal Courts of Original Jurisdiction," the magistrate shall proceed in the same manner as if the case had been triable by himself.

May issue a summons instead of a warrant.

In what cases he is to proceed as if the case had been triable by himself.

CXVIII.

Postponement of issue of process.

If the magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the magistrate to believe the charge well founded, and the offence be of the nature described in Article CXVII., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

May dismiss the complaint.

CXIX.

Magistrate may direct bail to be taken.

It shall be at the discretion of the magistrate in issuing his warrant for the arrest of any party against whom a complaint has been made, to direct that if such party be willing and ready to give bail in a sum to be fixed by the magistrate for his appearance before the magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release the party from custody. In the event of bail being given, the officer shall forward the recognizance to the magistrate.

CXX.

Magistrate may dispense with the personal attendance of the accused.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

CXXI.

Arrest on warrant indorsed by a magistrate of another district.

Where any such person as is mentioned in Article XXXVIII. or Article XXXIX. shall be apprehended out of the jurisdiction of the magistrate granting the warrant against him, and carried before the magistrate who indorsed such warrant, the magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the magistrate granting the warrant, shall take bail of such person for his appearance before the magistrate granting the warrant, release the person from custody, and forward the recognizance to the magistrate granting the warrant.

CXXII.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a magistrate he cannot be found, the magistrate shall, on proof thereof, cause a written proclamation, requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he usually resided. In case the party does not appear, and deliver himself up within the period fixed, it shall be lawful for the magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this Article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual seizure by an officer of the Magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the Magistrate shall deem proper under the circumstances of each case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Proclamation for an absconding party.

Attachment of property.

Property after six months to be at the disposal of Government.

Summoning, &c. of Witnesses.

CXXIII.

The magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons, under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said magistrate, to testify what they know concerning the complaint made against the accused party.

Summons to a witness to attend and give evidence.

CXXIV.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the magistrate to issue a warrant, under his hand and seal, to bring such persons before him to testify as aforesaid; and, if necessary, such warrant may be backed by the magistrate of another district, in order to its being executed out of the jurisdiction of the magistrate who shall have issued the same.

If he do not obey the summons, then warrant.

CXXV.

If the magistrate shall be satified by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

In what cases warrant in the first instance.

CXXVI.

If any person so summoned or brought before a magistrate shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the magistrate may, by warrant under his hand and seal, commit the person refusing to custody for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer, concerning the premises, after which, in the event of his persisting in his refusal he may be dealt with according to the provisions of Article CIX. or Article CXVI.

Refusing to answer, may be committed to custody.

Examination of Parties and Evidence.

CXXVII.

Examination of the complainant and witnesses for the prosecution.

When a case is brought before a magistrate in which a person is charged with an offence which is triable exclusively by the High Court or Court of Session, or which, in the opinion of the magistrate, is one that ought to be tried by the High Court or Court of Session, the magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall present the magistrate from examining the defendant at any stage of the inquiry, as provided in Article CXXXII.

CXXVIII.

To be in the presence of the defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the defendant, and the defendant shall be permitted to cross-examine them.

CXXIX.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CXXX.

Magistrate not to receive any written admission or confession of guilt made to the police.

It shall not be competent to the magistrate to receive in evidence against the defendant any written admission or confession of guilt or any statement made by him to the head, or other officer of police, and by him reduced into writing.

CXXXI.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the last preceding Article shall prevent the magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant.

CXXXII.

Examination of defendant.

It shall be at the discretion of the magistrate to examine the defendant at any stage of the inquiry from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the inquiry is completed, and the defendant either discharged or committed or held to bail to take his trial before the High Court or the Court of Session, as the case may be.

CXXXIII.

Magistrate how to proceed in case of confession.

If the defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

CXXXIV.

No influence to be used to induce disclosures.

No influence, by means of any promise or threat, shall be used to any defendant under examination to induce him to disclose or withhold any matter within his knowledge.

CXXXV.

The examination of the defendant, including every question put to him, and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the defendant refuses to sign, his reason shall be stated in writing as he gives it, at the foot of the examination, and whether the defendant signs it or not the examination shall be attested by the signature of the magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the defendant's statement. No other attestation shall be necessary to render the examination available as evidence at the trial of the defendant, and such attestation shall be admitted without proof of the signature to it, unless the trying Court shall see reason to doubt its genuineness.

Examination of the defendant, how to be recorded.

Examination to be admitted as evidence on the attestation of the magistrate.

CXXXVI.

The defendant, on examination, may be committed or held to bail by the magistrate for any offence which from the evidence he may appear to have committed.

Defendant may be detained for any offence committed by him.

CXXXVII.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the magistrate for the purpose of examination, for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made.

Any person attending may be detained for any offence committed by him.

CXXXVIII.

It shall be at the discretion of the magistrate to summon and examine any evidence that may be offered in behalf of the defendant to answer or disprove the evidence against him.

Discretionary with the magistrate to take evidence for the defence.

CXXXIX.

The provisions of Articles CXXIV., CXXV., CXXVI., and CXXIX. shall be applicable to witnesses named in support of the defence.

Witnesses for the defence.

Conditional Pardon.

CXL.

In cases of murder, dakoity, robbery, thuggee, offences relating to coin, and forgery, as well as in cases of housebreaking and theft, attended with circumstances of aggravation, it shall be lawful for the magistrate, recording his reasons for the same, to tender a pardon to one or more persons supposed to have been directly or indirectly concerned in or privy to the offence, on condition of their making a full, true, and fair disclosure of the whole of the circumstances within their knowledge relative to the crime committed, and the persons concerned in the perpetration thereof, or of their pointing out (in cases of robbery and theft) the mode in which the stolen property may have been disposed of.

Magistrate may tender a pardon in certain cases.

CXLI.

It shall be competent to the High Court as a Court of original jurisdiction, to the Session Court, or to the Hight Court as a Court of reference, to direct the commitment of any person to whom a pardon may have been offered under the provisions of the last preceding article, should it appear that such person has not conformed to the conditions under which the pardon was tendered, either by wilfully concealing anything essential, or by giving false evidence or information.

When High Court or Session Court may direct the commitment of a person to whom a pardon may have been tendered.

CXLII.

In like manner it shall be competent to the High Court as a Court of original jurisdiction, or to a Session Court, at the time of trial, and also to the High

When High Court or Session Court

may direct a tender of pardon.

Court as a Court of reference, to instruct the magistrate to tender a pardon to one or more persons supposed to have been, directly or indirectly concerned in or privy to the offence, with the view of obtaining his or their evidence on the trial.

CXLIII.

High Court may revise proceedings when a pardon may have been tendered.

It shall be competent to the High Court to revise the proceedings of the magistrates, in any case in which a pardon may have been tendered to any person, and to annul the orders passed on such proceedings, should it appear to the High Court that a pardon had been granted on insufficient grounds.

Bail.

CXLIV.

Bail not to be taken for certain offences if proof of guilt.

When may be taken.

Where any person shall appear or be brought before a magistrate accused of any of the offences entered as not bailable in Schedule A. of this Code of Procedure, such person shall not be admitted to bail, provided that there appear reasonable grounds for believing that he has been guilty of the crime imputed to him; but if the evidence given in support of the accusation shall, in the opinion of the magistrate, not be such as to raise a strong presumption of the guilt of the person accused and to require his committal, or such evidence shall be adduced on behalf of the person accused as shall, in the opinion of the magistrate, weaken the presumption of his guilt, but there shall appear to the magistrate in either of such cases to be sufficient ground for judicial inquiry into his guilt, the person accused shall be admitted to bail.

CXLV.

When bail shall be taken.

Where any person shall appear or be brought before a magistrate accused of any of the offences entered as bailable in Schedule A. of this Code of Procedure, he shall at once be admitted to bail.

CXLVI.

Recognizance of accused and sureties.

Where a magistrate shall admit any person accused of any offence, or on suspicion thereof, to bail, a recognizance in such sum of money as the magistrate shall think sufficient is to be entered into by the person so accused, and one or more sureties conditioned that such person shall attend during the preliminary inquiry, and, if required, shall appear at the then next session of the High Court or the Session Court, as the case may be, to answer the charge.

CXLVII.

Insufficient bail.

If through mistake or fraud insufficient bail has been taken, or if the sureties become afterwards insufficient, the accused may be ordered by the magistrate to find sufficient sureties, and in default may be committed to prison.

CXLVIII.

Bail may be taken any time before conviction.

If the accused cannot presently find sureties, he shall be admitted to bail upon his doing so at any time afterwards before conviction.

CXLIX.

Discharge on bail.

After the recognizances shall have been duly entered into, the magistrate, in case the accused shall have appeared voluntarily, or shall be in the custody of some officer, shall thereupon discharge him; and in case he shall be in some prison or other place of confinement, shall issue a warrant of discharge to the gaoler or other person having him in custody, who shall thereupon liberate him.

CL.

How persons who have bailed may discharge themselves.

Those who have become bail for any person may discharge themselves by taking him and surrendering him before the Court by which he has been bailed, and he may thereupon be committed to prison by the said Court.

CLI.

New sureties.

In such case it shall be competent to such defendant to find new sureties.

CLII.

Whenever by reason of default of appearance of the party executing the personal recognizance the magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance, he shall proceed to enforce the penalty in the mode prescribed for the satisfaction of decrees of the Civil Court.

Proceedings to compel payment of penalty by accused.

CLIII.

Whenever by reason of default of appearance by the party bailed the magistrate shall be of opinion that proceedings should be had to compel payment of the penalty mentioned in the recognizance of the surety or sureties, he shall give notice to the surety or sureties to pay the same, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the magistrate shall proceed to recover the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court, and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the Civil gaol, during a period not exceeding six months.

Proceedings to compel payment of penalty by sureties.

Warrant of Commitment.

CLIV.

Every warrant of commitment shall be directed to some gaoler keeper, or other officer or person having authority to receive and keep prisoners, either by his name or official description, and shall command the person to whom it is so directed to receive the prisoner and keep him until he be discharged in due course of law.

Warrant of commitment, how to be directed, &c.

CLV.

The warrant (which must be drawn up before the party is sent to prison) shall set forth the name of the defendant in full, if known; but if it be not known, then a description of his person, stating the refusal to tell his name; and shall state in substance the offence in respect of which the prisoner is charged, the authority of the committing officer, and the place of imprisonment.

Warrant, what to contain.

CLVI.

The warrant of commitment shall be lodged with the gaoler, if he be in the gaol; and if he be not, with his deputy; and if he has no deputy, it may be lodged with any officer of the gaol then being in the gaol.

With whom to be lodged.

Adjournment.

CLVII.

If from the absence of witnesses or from any other reasonable cause, it shall become necessary or advisable to defer the examination, or further examination, of witnesses for any time, it shall be lawful for the magistrate, by a written order, from time to time to adjourn the inquiry, and to remand the person accused for such time as shall be deemed reasonable, not exceeding fifteen days; provided that the magistrate may order such accused person to be brought before him at any time before the expiration of the time for which such accused person shall be so remanded, and the gaoler or other officer in whose custody he shall then be shall duly obey such order; provided also, that, instead of detaining the accused person in custody during the period for which he shall be so remanded, the magistrate may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such magistrate, conditioned for his appearance at the time and place appointed for the continuance of such examination.

When magistrate may adjourn the inquiry.

Discharge of the Defendant.

CLVIII.

When defendant to be discharged.

When a magistrate finds that there are not sufficient grounds for putting the defendant on his trial on a formal charge, or for remanding him, he shall discharge him.

Commitment, &c. of the Defendant for Trial.

CLIX.

When defendant to be committed for trial.

The defendant shall be sent for trial by a magistrate of Madras [*Bombay*] before the High Court, and by a magistrate of a Zillah before the Session Court, when evidence has been given before the magistrate which appears to be sufficient to convict the defendant of an offence which is triable exclusively by the High Court or the Court of Session, or which, in the opinion of the magistrate, is one that ought to be tried by the High Court or the Court of Session.

CLX.

Copy of charge to be furnished to defendant.

Witnesses for the defence on the trial.

As soon as the charge on which the defendant is to be tried has been prepared it shall be read to the defendant, and a copy or translation of it shall be furnished to him. The defendant shall then be at liberty to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the High Court or the Session Court, as the case may be. The magistrate shall receive the list, and summon the witnesses to appear before the Court before which the defendant is to be tried. This, however, shall not prevent a person committed from giving in a further list of witnesses, and having them summoned at any time between the commitment and the trial. The provisions of Articles CXXIV. and CXXV., so far as they relate to the compulsory attendance of witnesses, shall be applicable to witnesses named by the defendant in the lists above mentioned.

CLXI.

Copies of depositions to be furnished to defendant.

When the preliminary inquiry is concluded the defendant shall be entitled to copies of the depositions on the record of the same without delay, if he demands them a reasonable time before the trial.

CLXII.

Warrant of commitment.

Upon the commitment of the defendant to take his trial before the High Court or the Court of Session, as the case may be, the magistrate shall issue a warrant of commitment, stating the offence in the same form as the charge.

CHAPTER XII.

On the Charge.

CLXIII.

What the charge is to contain.

When the magistrate has resolved to send the defendant before the High Court or Court of Session for trial, or put him on his trial before himself for any offence punishable under the Penal Code with imprisonment for a period exceeding six months, he shall make a written instrument under his hand and seal, declaring with what offence the defendant is charged, and within the cognizance of what Court the offence is, and shall direct that the defendant be tried by the said Court on the said charge. In all cases sent for trial to the High Court or Court of Session, the magistrate shall send a copy of this instrument, with the proceedings, to the public prosecutor, where such officer has been appointed, otherwise to the Court before which the defendant is to be tried.

CLXIV.

How the offence is to be described.

The charge shall describe the imputed offence as nearly as possible in the language of the clause of the Penal Code under which such offence is punishable, and shall refer to such clause by the number of the clause.

CLXV.

It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come within any of the General Exceptions contained in the third chapter of the Penal Code, but every charge shall be understood to assume the absence of all such circumstances. Absence of General Exceptions under the Penal Code to be assumed.

CLXVI.

It shall not be necessary at the trial, on the part of the prosecutor, to prove the absence of such circumstances in the first instance; but the defendant shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may be given on the part of the prosecutor. Evidence as to General Exceptions.

CLXVII.

Where the clause itself referred to in the charge contains an exception, not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting such exception so contained in the clause, without a distinct denial of the existence of such circumstances. Clause of the Penal Code containing an exception, not a General Exception.

CLXVIII.

The charge may contain one or more heads.

Charges containing One Head.

CLXIX.

Where a charge contains one head only, the form shall be as follows, or to the same effect: Heads of charge.

Forms of Charge.

(*a*) I, A. [*name and office of magistrate, &c.*], declare that there is hereby made against Z. the charge:

(*b*) That he has waged war against the Government of part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th clause of the Penal Code, (*c*) and within the cognizance of the [*style of the Court*]. On clause 109.

(*d*) And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the magistrate.*]

Where the magistrate tries the case, there must be substituted for (*c*): within my cognizance; and *the words* "by the said Court" *in* (*d*) *may be omitted.*

To be substituted for (*b*):

2. That he has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th clause of the Penal Code, and, by committing such offence, has also committed an offence punishable under the 319th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has, by reason of the premises, become liable to cumulative punishment under the 112th clause of the Penal Code. On clause 112 applied to clauses 111 and 319.

3. That he has committed the offence of rioting, and has thereby committed an offence punishable under the 129th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clause 129.

4. That he has, being a public servant, directly accepted from a party, for another party, a gratification, other than legal remuneration, as a motive for his, the said Z.'s, forbearing to do an official act, and has thereby committed an offence punishable under the 138th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clause 138.

5. That he has committed voluntary culpable homicide in defence, and has thereby committed an offence punishable under the 303d clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clause 303.

On clause 306. 6. That he has previously abetted by aid the commission of suicide by a person in a state of intoxication, and has thereby committed an offence punishable under the 306th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 308. 7. That he has omitted what he was legally bound to do, with such knowledge and under such circumstances that, if he by that omission had caused death, he would have been guilty of murder, and has carried that omission to such a length as, at the time of carrying it to that length, he contemplated as sufficient to cause death, and has thereby committed an offence punishable under the 308th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 319. 8. That he has voluntarily caused grevious hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 319th clause of The Penal Code, and within the cognizance of the [*style of the Court*].

On clause 377. 9. That he has committed robbery, and has thereby committed an offence punishable under the 377th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 379. 10. That he has committed dakoity, and has thereby committed an offence punishable under the 379th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 388. 11. That he, being a public servant in the post office department, and being, as such, intrusted with the keeping of a packet, has committed criminal breach of trust by misappropriating a thing contained in such packet, and has thereby committed an offence punishable under the 388th article of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 435. 12. That he has committed lurking house trespass by night, and has thereby committed an offence punishable under the 435th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

On clause 436 applied to clauses 364 and 435. 13. That he has committed lurking house trespass by night, being an offence punishable under the 435th clause of the Penal Code, in order to the committing of theft, and has actually committed such theft, being an offence punishable under the 361th clause of the Penal Code, both such offences being within the cognizance of the [*style of the Court*], and has by reason of the premises become liable to cumulative punishment under the 436th clause of the Penal Code.

And the same form shall be followed, as nearly as may be, in charges with one head only, upon other clauses of the Penal Code.

Charges containing Two or more Heads.

CLXX.

Charge in cases falling within two or more clauses of the Penal Code.

When it appears to the magistrate that the facts which can be established in evidence show a case falling within two or more clauses of the Penal Code, the charge shall contain two or more heads, each of which shall be applicable to one of such clauses.

CLXXI.

Two or more offences punishable under the same clause.

When it appears to the magistrate that the facts which can be established in evidence show the commission of two or more offences punishable under the same clause of the Penal Code, the charge shall contain two or more heads charging such offences respectively.

CLXXII.

Cases of doubt as to the clause which is applicable, or the offence which may be proved.

When it appears to the magistrate that the facts which can be established in evidence show a case within some one of two or more clauses of the Penal Code, but it is doubtful which of such clauses will be applicable, or show the commission of one of two or more offences punishable under the same clause of the Penal Code, but it is doubtful which of such offences will be proved to have been committed, the charge shall contain two or more heads, framed respectively on each of such clauses, or charging respectively each of such offences accordingly.

CLXXIII.

Form of charge of more than one head.

When a charge contains more heads than one, the form shall be as follows, or to the same effect:

Forms of Charge.

I, A. [*name and office of magistrate, &c.*] declare that there is hereby made against Z. the charge:

First: That he has, knowing a coin to be counterfeit, delivered the same to another person as genuine, and has thereby committed an offence punishable under the 242d clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 242, 243.

Secondly: That he has, knowing a coin to be counterfeit, attempted to induce another person to receive it as genuine, and has thereby committed an offence pnnishable under the 242d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and intending that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, and knowing it to be likely that such counterfeit coin might pass as genuine, and has thereby committed an offence punishable under the 243d clause of the Penal Code, and within the cognizance of the [*style of the Court*].

And I hereby direct that Z. be tried by the said Court on the said charge.

[*Signature and seal of the magistrate, &c.*]

First: That he has committed murder, and has thereby committed an offence punishable under the 300th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 300, 301.

Secondly: That he has committed manslaughter, and has thereby committed an offence punishable under the 301st clause of the Penal Code, and within the cognizance of the [*style of the Court*].

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 364, 367.

Secondly: That he has committed theft, having made preparation for causing death to a person in order to the committing of such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Thirdly: That he has committed theft, having made preparation for causing restraint to a person in order to retiring after the committing of such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

Fourthly: That he has committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and has thereby committed an offence punishable under the 367th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

First: That he has committed theft, and has thereby committed an offence punishable under the 364th clause of the Penal Code, and within the cognizance of the [*style of the Court*]. On clauses 364, 387.

Secondly: That he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th clause of the Penal Code, and within the cognizance of the [*style of the Court*].

And the same shall be followed, as nearly as may be, in charges with more heads than one, upon other clauses of the Penal Code.

CLXXIV.

It shall be competent to the Court, at any stage of a trial, to amend or alter the charge against a defendant. Amendment of charge.

CLXXV.

If the amendment or alteration is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the defendant in his defence, it shall be at the discretion of the Court, after making the When the trial may be immediately proceeded with after amendment.

amendment or alteration, to proceed with the trial as if the amended charge had been the original charge.

CLXXVI.

When a new trial may be ordered, or trial suspended.

If the amendment or alteration is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the defendant in his defence, the Court may either direct a new trial, or suspend the trial for such period as may be necessary to enable the defendant to make his defence to the amended or altered charge; and, after hearing his defence, may further adjourn the trial to admit of the appearance of any witnesses whose evidence the Court may consider to be material to the case, or whom the defendant may wish to be summoned in his defence. If after the reading of the amended or altered charge to the defendant no postponement is desired by the defendant, or considered necessary by the Court, the Court may at once proceed with the trial.

CLXXVII.

Defendant may recal and cross-examine witnesses for prosecution.

In all cases of amendment or alteration of a charge, the defendant shall be allowed to recal and cross-examine any witness that may have been examined for the prosecution.

CHAPTER XIII.

Of Offences triable by the Magistrate.

Cases in which a Warrant on Complaint may issue against the Defendant

Complaint and issuing of Process for causing the Attendance of the Accused.

CLXXVIII.

Cases in which magistrate may issue a warrant.

Summons instead of warrant.

In all cases where a complaint shall be made before a magistrate having jurisdiction in the case that any person has committed, or is suspected to have committed, any offence triable by such magistrate, and which is punishable under the Penal Code with imprisonment for a period exceeding six months, it shall be lawful for such magistrate to issue his warrant to apprehend such person; provided always, that in all cases it shall be lawful for the magistrate to whom such complaint shall be made, if he shall so think fit, instead of issuing in the first instance his warrant to apprehend the person so complained against, to issue his summons requiring him to appear to answer to such complaint.

CLXXIX.

Postponement of issue of process.

If the magistrate see cause to distrust the truth of the complaint, he may postpone the issuing of process for causing the attendance of the accused, and direct a previous inquiry to be made into the complaint, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of the inquiry induces the magistrate to believe the charge well founded, and the offence be of the nature described in Article CLXXVIII., he shall issue his warrant or summons as therein directed; provided, that nothing herein contained shall prevent the magistrate from at once dismissing the complaint, if in his judgment there be no sufficient ground for proceeding with it.

CLXXX.

Magistrate may direct bail to be taken.

It shall be at the discretion of the magistrate, in issuing his warrant for the arrest of any person against whom a complaint has been made, to direct that if such person be willing and ready to give bail in a sum to be fixed by the magistrate for his appearance before the magistrate on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release such person from custody. In the event of bail being given, the officer shall forward the recognizance to the magistrate.

CLXXXI.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party.

Magistrate may dispense with personal attendance of accused.

CLXXXII.

Where any such person as is mentioned in Article XXXVIII. or Article XXXIX. shall be apprehended out of the jurisdiction of the magistrate granting the warrant against him, and carried before the magistrate who indorsed such warrant, the magistrate before whom such person shall be brought, in case the offence for which such person shall be apprehended shall be bailable in law, and such person shall be willing and ready to give bail for his appearance on a specified date before the magistrate granting the warrant, shall take bail of such person for his appearance before the magistrate granting the warrant, release the person from custody, and forward the recognizance to the magistrate granting the warrant.

Arrest on warrant indorsed by a magistrate of another district.

CLXXXIII.

If any person accused of an offence absconds or conceals himself, so that upon a process issued against him by a magistrate he cannot be found, the magistrate shall, on proof thereof, cause a written proclamation requiring the absent party to appear to answer the complaint within a fixed period, not less than one month, to be publicly read and proclaimed by beat of drum, and shall cause such proclamation to be affixed in some conspicuous part of his Court, as well on the entrance door of the house in which the party has usually dwelt, or some conspicuous place in the town or village in which he has usually resided. In case the party does not appear, and deliver himself up within the period fixed, it shall be lawful for the magistrate, on receiving the return of the proper officer to this effect, and on proof of the publication of the proclamation in the manner above provided, to order the attachment of any moveable or immoveable property held within his jurisdiction by the party absconding or concealing himself. The attachment under this article shall, if the property ordered to be attached be land paying revenue to Government, be made through the collector of the district in which the land is situate; and in all other cases either by actual seizure by an officer of the magistrate's Court, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rents to the absent party, as the magistrate shall deem proper under the circumstances of each case. If the absent party shall not appear within six months from the date of the publication of the proclamation, the property under attachment shall be at the disposal of the Government.

Proclamation for an absconding party.

Attachment of property.

Property after six months to be at the disposal of Government.

Summoning, &c. of Witnesses.

CLXXXIV.

The magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and are likely to give material evidence for the prosecution, and shall issue his summons to such persons under his hand and seal, requiring them to appear at a time and place mentioned in the summons before the said magistrate, to testify what they know concerning the complaint made against the accused party.

Summons to a witness to attend and give evidence.

CLXXXV.

If any person so summoned shall neglect or refuse to appear at the time and place appointed by the summons, and no just excuse shall be offered for such neglect or refusal, then upon proof of such summons having been served upon such person, either personally or by leaving the same for him with some adult member of his family, it shall be lawful for the magistrate to issue a warrant, under his hand and seal, to bring such person before him to testify as aforesaid; and, if necessary, such warrant may be backed by

If he do not obey the summons, then warrant.

the magistrate of another district, in order to its being executed out of the jurisdiction of the magistrate who shall have issued the same.

CLXXXVI.

In what cases warrant in the first instance.

If the magistrate shall be satisfied by evidence before him that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, which, if necessary, may be backed as aforesaid.

CLXXXVII.

Refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, the magistrate may, by warrant under his hand and seal, commit such witness to custody for any term not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI.

Examination of Parties and Evidence.

CLXXXVIII.

Examination of the complainant and witnesses for the prosecution.

When any such case, as referred to in Article CLXXVIII., is brought before a magistrate, the magistrate shall take the evidence of the complainant, and of such persons as are stated to have any knowledge of the facts which form the subject matter of the accusation and the attendant circumstances; provided that nothing herein contained shall prevent the magistrate from examining the defendant at any stage of the proceedings, as provided in Article CXCIV.

CLXXXIX.

To be in the presence of the defendant, who may cross-examine.

The complainant and the witnesses for the prosecution shall be examined in the presence of the defendant, and the defendant shall be permitted to cross-examine them.

CXC.

How the evidence is to be recorded.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the magistrate, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness, and signed by him in the presence of the magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the magistrate upon the objection. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CXCI.

Magistrate not to receive written confession of guilt made to the police.

It shall not be competent to the magistrate to receive in evidence against the defendant any written admission or confession of guilt or any statement made by him to the head or other officer of police, and by him reduced into writing.

CXCII.

But may receive evidence of a police officer as to unrecorded admission of guilt.

Nothing contained in the last preceding Article shall prevent the magistrate from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence.

CXCIII.

It shall be at the discretion of the magistrate, at any stage of the proceedings, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

May summon necessary witnesses at any stage of the proceedings.

CXCIV.

It shall be at the discretion of the magistrate to examine the defendant at any stage of the proceedings, from the time of the defendant being first brought before him, and to put such questions to him from time to time as he may consider necessary, until the proceedings are completed and judgment pronounced

Examination of defendant.

CXCV.

If the defendant shall of his own accord propose to confess the commission by him of the offence of which he supposes himself to be accused, the magistrate shall require him to give an account of the facts and circumstances in detail, and shall examine him thereupon to test the consistency of his relation, in the same manner as if he were a witness.

Magistrate how to proceed in case of confession.

CXCVI.

No influence, by means of any promise or threat, shall be used to any defendant under examination, to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

CXCVII.

The examination of the defendant, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers; and when the whole is made conformable to what he declares is the truth, he shall be called upon to sign the examination; and so with the examination made on each day, if made on more days than one. If the defendant refuses to sign, his reason shall be stated in writing, as he gives it, at the foot of the examination; and, whether the defendant signs it or not, the examination shall be attested by the signature of the magistrate, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the defendant's statement.

Examination of the defendant how to be recorded.

CXCVIII.

The defendant, on examination, may be committed or held to bail by the magistrate for any offence which from the evidence he may appear to have committed.

Defendant may be detained for any offence committed by him.

CXCIX.

Any person attending, although otherwise than upon an arrest or summons on a charge made, may be detained by the magistrate for the purpose of examination for any offence which from the evidence he may appear to have committed, and proceeded against as though he had been summoned on a charge made.

Any person attending may be detained for any offence committed by him.

Bail and Warrant of Commitment.

CC.

The provisions of Articles CXLIV. to CLVI. inclusive shall be applicable to cases triable by the magistrate under the rules contained in this section.

Application of previous rules.

Adjournment.

CCI.

The provisions of Article CLVII. shall be applicable to cases triable by the magistrate under the rules of this section.

Application of previous rules.

Discharge of the Defendant.

CCII.

When defendant to be discharged.

When a magistrate finds that there are not sufficient grounds for putting the defendant on his trial on a formal charge, or for remanding him, he shall discharge him.

Charge, Plea, and Defence.

CCIII.

Charge.

When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the defendant as the magistrate may consider necessary, have been taken, the magistrate shall consider whether any and what offence is *primâ facie* proved against the defendant, and if he finds that an offence is apparently proved against the defendant which falls within the definition in a certain clause of the Penal Code, or within one or other of the definitions in several clauses of the code, he shall prepare in writing a charge against the defendant in the manner prescribed in Chapter XII. of this Code of Procedure.

CCIV.

Plea.

The charge shall then be read to the defendant, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCV.

Plea of "guilty."

If the defendant plead "guilty," the magistrate shall explain to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the defendant comprehends the nature of the charge, and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon.

CCVI.

Plea of "not guilty."

If the defendant plead "not guilty" to the charge, he shall be called upon to enter upon his defence, and to produce his evidence, if in attendance, and shall be allowed to recal and cross-examine the witnesses for the prosecution.

CCVII.

Evidence for the defence.

The magistrate shall summon any witness, and examine any evidence, that may be offered in behalf of the defendant, to answer or disprove the evidence against him, and may, for this purpose, at his discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

CCVIII.

Witnesses for the defence.

The provisions of Articles CLXXXV., CLXXXVI., CLXXXVII., and CXC. shall be applicable to witnesses named in support of the defence.

CCIX.

Conviction.

If the defendant is convicted, the magistrate shall pass sentence upon him according to law.

CCX.

How the magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

In any trial before a magistrate, wherein it may appear, at any stage of the proceedings, that either from the value of the property exceeding the pecuniary limit assigned to the magistrate, or other cause, the case is one which the magistrate is not competent to try, the magistrate shall stop further proceedings under this Chapter, and shall proceed in accordance with the Rules of Chapter XI. for conducting preliminary investigations in cases triable by the High Court or Session Court; and if the accused have been called upon to plead to a charge or charges prepared by the magistrate, such charge or charges, and the proceedings consequent thereon, shall be held to be null and void.

CHAPTER XIV.

Of Offences triable by the Magistrates.

Cases in which a Summons on Complaint shall issue to the Defendant.

Complaint and issuing of Process for causing the Attendance of the Accused.

CCXI.

In all cases where a complaint shall be made before a magistrate, having jurisdiction in the case, that any person has committed or is suspected to have committed any offence other than the offences provided for in Chapter XIII. of this Code of Procedure, for which he is liable, upon a summary conviction for the same before a magistrate, to be imprisoned or fined, or otherwise punished, it shall be lawful for such magistrate to issue his summons directed to such person, stating shortly the matter of such complaint, and requiring him to appear at a certain time and place before such magistrate, to answer to the said complaint; provided that if the magistrate shall be satisfied by evidence before him that the accused is about to abscond, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance for the arrest of the accused. Summons shall issue. When warrant may issue.

CCXII.

Every such summons shall be served upon the person to whom it is so directed, by delivering the same to such person, or by leaving the same with some adult member of his family; and the proper officer shall certify the service of the said summons. Service of Summons.

CCXIII.

Provided that, before issuing the summons to the accused party it shall be competent to the magistrate to examine the complainant as to the specific facts of the case, and if upon such examination it shall appear to the magistrate that there is no sufficient ground for summoning the accused, he may refuse the summons. When magistrate may refuse summons.

CCXIV.

If the person served with a summons as provided in Article CCXII. shall not be and appear before the magistrate at the time and place mentioned in such summons, and it shall be made to appear to the magistrate that such summons was so served in what shall be deemed by the magistrate to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such magistrate, if he shall think fit, upon declaration being made before him substantiating the matter of such complaint to his satisfaction, to issue his warrant to apprehend the person so summoned, and to bring him before such magistrate to answer to the said complaint. If summons be not obeyed, warrant.

CCXV.

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of the party complained against, and permit him to appear by an agent duly authorized to act in his behalf. In such case, however, it shall be at the discretion of the magistrate, at any stage of the proceedings, to direct the personal attendance of such party. Magistrate may dispense with personal attendance of accused.

Summoning, &c. of Witnesses.

CCXVI.

If it shall be made to appear to the magistrate that any person is likely to give material evidence in behalf of the complainant or defendant in any case which may be tried according to the rules of this Chapter, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such complaint, such magistrate shall issue his Summons to witness to attend and give evidence.

summons to such person under his hand and seal, requiring him to appear at a time and place mentioned in the summons, before the said magistrate, to testify what he knows concerning the matter of the said complaint.

CCXVII.

Diet money for witnesses.

It shall be lawful for the magistrate to direct that before any process is issued for the attendance of witnesses in cases under this Chapter, the person preferring the charge shall deposit in the hands of the proper officer a sufficient sum for the maintenance of the witnesses who may be summoned on his application, during their attendance at the magistrate's Court, and the magistrate shall regulate the amount of diet money so required, with reference to the probable period such witnesses may have to be in attendance, and in the event of the prolonged detention of witnesses, shall direct the deposit of any further sum which to the said magistrate may seem requisite.

CCXVIII.

Magistrate may summon necessary evidence.

It shall be at the discretion of the magistrate, at any stage of the trial, to summon and examine any witnesses whose evidence he may consider essential to the just decision of the case.

CCXIX.

Application of previous rules.

The provisions of Articles CLXXXV., CLXXXVI., and CLXXXVII. shall be applicable to witnesses summoned according to the provisions of Articles CCXVI. and CCXVIII.

Bail.

CCXX.

Defendant may be admitted to bail or to be at large upon personal Recognizance.

If upon the day and at the place appointed the defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the magistrate by virtue of any warrant, it shall be at the discretion of the magistrate to admit the defendant to bail, or allow him to be at large upon his personal recognizance. If he cannot give bail, when required to do so, he shall be committed to custody. In cases in which the order of the magistrate shall direct that the defendant be admitted to bail, the provisions of Articles CXLIV. to CLIII. inclusive shall be applicable to cases tried according to the provisions of this Chapter.

Appearance, Examination of Parties, and Evidence.

CCXXI.

Nonappearance of Complainant.

If upon the day appointed for the appearance of the defendant, or any day subsequent thereto, on which the case may be called on, the complainant does not appear, the magistrate shall dismiss the complaint; unless for some reason he shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he shall think fit.

CCXXII.

Admission by defendant of truth of complaint.

On the appearance of both parties for the hearing of the case, the substance of the complaint shall be stated to the defendant, and he shall be asked if he have any cause to show why he should not be convicted; and if he thereupon admit the truth of such complaint, and show no cause, or no sufficient cause, why he should not be convicted, then the magistrate may convict him accordingly,

CCXXIII.

Proceeding when no such admission is made.

If the defendant do not admit the truth of the complaint, then the magistrate shall proceed to hear the complainant, and such witnesses as he may examine in support of his complaint, and also to hear the defendant and such witnesses as he may examine in his defence; and having heard the parties and their witnesses, shall consider the whole matter and determine the same, and shall convict the defendant or dismiss the complaint, as the case may be.

CCXXIV.

The evidence of each witness shall be taken down in writing by, or in the presence and under the superintendence of the magistrate, not ordinarily in [illegible] magistrate. In case the witness shall refuse to sign the deposition, the magistrate shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the magistrate shall think fit to make. It shall be at the discretion of the magistrate to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the magistrate shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the person making it, shall be noticed in taking down the depositions, together with the decision of the magistrate upon the objection. The magistrate shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

How the evidence is to be recorded.

CCXXV.

Before or during the hearing of any complaint, it shall be lawful for the magistrate to adjourn the hearing of the same to a future day, to be then appointed and stated in the presence and hearing of the party or parties; and if on the day to which such hearing or such further hearing shall be so adjourned the defendant shall not appear, the magistrate may issue his warrant for the arrest of such defendant, and if the complainant shall not appear, the magistrate may dismiss such complaint.

Adjournment.

CCXXVI.

It shall be at the discretion of the magistrate, in the trial of any case in which a summons on complaint shall issue to the defendant, to follow the rules of procedure prescribed in Chapter XII. for the preferring of criminal charges, and in Articles CCIII. to CCVIII. inclusive, for the trial of such charges.

Formal charge may be prepared.

CCXXVII.

If the defendant is convicted, the magistrate shall pass sentence upon him according to law.

Conviction.

Costs.

CCXXVIII.

In all cases of summary conviction under this chapter, it shall be lawful for the magistrate making the same, in his discretion, to award that the defendant shall pay to the complainant such costs as to such magistrate shall seem just and reasonable; and in cases where such magistrate, instead of convicting as aforesaid, shall dismiss the complaint, it shall be lawful for him, in his discretion, in and by his order of dismissal, to award and order that the complainant shall pay to the defendant such costs as to such magistrate shall seem just and reasonable; and the sums so allowed for costs shall always be specified in such conviction, or order of dismissal aforesaid, and shall be recoverable by distress and sale of the goods and chattels of the party, and, in default of such distress, by imprisonment, without labour, in the gaol for the confinement of debtors, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

Magistrate may award Costs.

CHAPTER XV.

Of Inquiries and Trials before the Subordinate Criminal Courts.

CCXXIX.

Criminal cases shall be brought before the Subordinate Criminal Courts by reference by the magistrate. It shall, however, be at the discretion of the Government, respect being had to the public convenience, to authorize a

How cases are to be brought before Subordinate Criminal Courts.

Subordinate Criminal Court also to receive such cases on complaint preferred directly to such Court, or on the report of a police officer.

CCXXX.

Cases how to be referred.

Whenever a criminal case is referred by a magistrate to a Subordinate Criminal Court, the order of reference, if the case have been transmitted by a police officer, shall be recorded on such officer's report, and if the complaint have been preferred direct to the magistrate, the process for causing the attendance of the accused shall be made returnable to the Court to which the case is referred, and the witnesses shall be directed by the summons to attend at such Court.

CCXXXI.

Subordinate Criminal Courts to follow the same rules of procedure as the magistrate.

In the trial of criminal cases, whether brought before them on reference by the magistrate, or directly by complaint preferred to themselves, or by the report of a police officer, the Subordinate Criminal Courts shall be guided by the rules prescribed for the guidance of the magistrate in similar cases, and police officers and others shall be bound to obey all orders and processes issued in such cases by a Subordinate Criminal Court in like manner as if they had been issued by the magistrate.

CCXXXII.

Mode of proceeding in cases beyond jurisdiction.

In every case before a Subordinate Criminal Court, wherein the Court, at any stage of the proceedings, may be of opinion that the evidence is such as to warrant a presumption that the defendant has been guilty of an offence calling for a more severe punishment than the Court is authorized to adjudge, it shall stop further proceedings, and if the case have been brought before it by complaint directly preferred, shall leave the complainant to apply to the magistrate, and in all other cases shall submit its proceedings to the magistrate, who shall either try the case himself, or if the case have been submitted by a Subordinate Criminal Court of the second class, refer it, at his discretion, to a Subordinate Criminal Court of the first class. In either case, the Court which gives judgment in the trial shall examine the parties and the evidence, as if no proceedings had been held in any other Court.

CCXXXIII.

Foregoing rule not to interfere with the power of a S.C.C. to commit for trial before the Session Court.

Provided, that nothing in the last preceding article shall be held to interfere with the exercise of power specially conferred upon a judge of a Subordinate Criminal Court, in regard to committing or holding to bail persons charged with criminal offences to take their trial before the Session Courts.

CHAPTER XVI.

Place where Preliminary Investigations and Trials held, an open Court.

CCXXXIV.

Place where investigation made, an open Court.

The room or place in which the magistrate, or judge of a Subordinate Criminal Court, shall sit to hear and try any complaint triable by himself, or to conduct the preliminary investigation into any case triable by the High Court or a Session Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them; but it shall be lawful for the magistrate or judge of a Subordinate Criminal Court, in his discretion, to order that during the investigation into any particular case triable by the High Court or a Session Court, no person shall have access to, or be or remain in such room or building without the consent or permission of such magistrate or judge, if it appears to him that the ends of justice will be best answered by so doing.

CHAPTER XVII.

Of Recognizance and Security to keep the Peace.

CCXXXV.

Whenever a person charged with rioting, assault, or other violent breach of the peace, or with abetting the same, or with assembling armed men or taking other unlawful measures with the evident intention of committing the same, shall be convicted of such charge before any Criminal Court by which the offence may be cognizable; and the Court by which a final sentence or order in the case may be passed, shall be of opinion that it is just and necessary to require a penal recognizance for keeping the peace, from the person so convicted; it shall be lawful to the Court passing the final sentence or order, to direct that the person so convicted be required to execute a formal engagement in a sum proportionate to such person's condition in life and the circumstances of the case, for keeping the peace during such period as it may appear proper to fix in each instance, not exceeding one year from the time of the prisoner's discharge, if the sentence or order be passed by a magistrate or other officer exercising the powers of a magistrate, or three years, if the sentence or final order be passed by the High Court, or by a Session Court.

Personal recognizance to keep the peace in cases of conviction.

CCXXXVI.

In cases wherein it may appear necessary to require security for keeping the peace in addition to the personal recognizance of the party, it shall also be lawful to the Court passing the final sentence or order, to direct the same, and to fix the amount of the security bond to be executed by the surety or sureties; with a provision that if the same be not given the party required to find the security shall be kept in custody for any time not exceeding one year, if the order be passed by a magistrate, or other officer exercising the powers of a magistrate, or three years if the order be passed by the High Court, or by a Session Court.

Security to keep the peace.

CCXXXVII.

It shall be lawful for the magistrates, or other officers exercising the powers of a magistrate, to take a recognizance from a party in all cases wherein it may appear just and necessary to require the same for the maintenance of the peace in their respective jurisdictions, although the party to be bound in such recognizance may not have been convicted of any specific offence.

Personal recognizance without conviction.

CCXXXVIII.

In cases wherein it may appear necessary to require security for keeping the peace, in addition to the recognizance of the party, it shall be lawful for such magistrate, or other officer exercising the powers of a magistrate, to direct the same, although the party required to give such security may not have been convicted of any specific offence, and to fix a reasonable amount for the security bond to be executed by the surety or sureties.

Security without conviction.

CCXXXIX.

Whenever it shall appear to the magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, need not exceed one year, it shall be lawful for him, without reference to superior authority, to give directions accordingly, and in default of such recognizance or additional security, to commit the party to prison in the civil gaol until he shall do what has been required of him.

For one year.

CCXL.

Whenever it shall appear to the magistrate or other officer as aforesaid that the period for which the party should be bound to keep the peace, with or without additional security, ought to exceed the period of one year, the magistrate or other officer aforesaid shall record his opinion to that effect, with an order specifying the amount of recognizance and security, as well as the

For more than one year.

number of sureties which should in his judgment be required, and the period for which the recognizance and security should be required, which however shall in no case exceed three years. If the party shall not furnish the recognizances and security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Court of Session (according as the order may have been passed by a magistrate of Madras [*Bombay*] or by a magistrate of a district in the Mofussil), which, after examining them and calling for any further information or evidence which it may think necessary, shall pass orders on the case confirming, modifying, or annulling the orders of the magistrate or other officer as aforesaid, and if the orders so passed by the High Court or Session Court confirm to any extent the requisition for recognizance or securities, the High Court or Session Court shall direct the magistrate or other officer as aforesaid to commit the party to prison in the civil gaol until he shall do what has been required of him.

CCXLI.

Imprisonment not to exceed period of recognizance and security.

Provided always, that no party shall be kept in prison under the provisions of the foregoing articles for a longer period than that for which the recognizance and securities have been required from him.

CCXLII.

When magistrate may release persons under requisition of security.

The magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security to keep the peace, whether by their own orders or by those of any other person exercising the powers of a magistrate; provided the magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

CCXLIII.

When he must report.

In cases in which a magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security to keep the peace, by order of the High Court, or of a Session Court, can be safely released without such security, the magistrate shall make an immediate report of the case, with his opinion, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCXLIV.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the peaceable behaviour of parties may, at all times, obtain a discharge from their future responsibility, by delivering up or causing to be delivered up the parties for whom they may have become responsible to the proper magistrate. In such case it shall be competent to such parties to find new sureties.

CCXLV.

Proceeding to compel payment of penalty of personal recognizance.

Whenever it may be proved before the magistrate that any such recognizance of a party as aforesaid has been forfeited, he shall proceed to enforce the penalty of such recognizance in the mode prescribed for the satisfaction of decrees of the Civil Court.

CCXLVI.

Proceeding to compel payment of penalty by sureties.

Whenever it may be proved before the magistrate that any such recognizance has been forfeited, if a security bond shall have been taken and the magistrate shall think that proceedings should be had upon such bond, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the magistrate shall proceed to levy the penalty from such surety or sureties by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XVIII.

Security for Good Behaviour.

CCXLVII.

Whenever it shall appear to a magistrate, from the evidence to general character adduced before him, that any person is by repute a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, it shall be competent to the magistrate to require security for the good behaviour of such person for a definite period not exceeding one year.

When magistrate may require security for good behaviour for one year.

CCXLVIII.

Whenever it shall appear to a magistrate, from the evidence to general character adduced before him, that any person is by habit a robber, housebreaker, or thief, or a receiver of stolen property, knowing the same to have been stolen, of a character so desperate and dangerous as to render his release, without security, at the expiration of the limited period of one year, hazardous to the community, the magistrate shall record his opinion to this effect, with an order specifying the amount of security which should, in his judgment, be required from such person, as well as the number of sureties, and the period, not exceeding three years, for which the sureties should be responsible for such person's good behaviour.

How to proceed in cases beyond one year.

CCXLIX.

If the person required to furnish security, as provided in the last preceding article, shall not furnish the security so required, the proceedings shall be laid, as soon as conveniently may be, before the High Court or the Sessions Court, (according as the order may have been passed by a magistrate of Madras [*Bombay*] or by a magistrate of a district in the Mofussil,) which, after examining them, and requiring any further information or evidence which it may judge necessary, shall be competent to pass orders on the case, either confirming, modifying, or annulling the orders of the magistrate, as it may judge proper and equitable.

Case to be laid before the High Court or Session Court.

CCL.

In all such cases, if the High Court or Session Court shall not think it safe to direct the immediate discharge of such person, it shall fix a limited period for his detention, not exceeding three years, in the event of his not giving the security required from him.

High Court or Session Court may require security not exceeding three years.

CCLI.

In every instance in which security for good behaviour may be required, whether by the High Court, the Session Court, or the magistrate, the amount of the security, the number of sureties, and the period of time for which the sureties are to be responsible for the good conduct of the person required to furnish security, shall be stated.

What the order for security is to contain.

CCLII.

In the event of any person required to give security under the provisions of the foregoing articles failing to furnish the security so required, he shall be committed to prison until he furnish the same; provided always, that no party shall be kept in prison for a longer period than that for which the security has been required from him.

In default of security, party to be committed to prison.

CCLIII.

The magistrates are empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for good behaviour, whether by their own orders or by those of any other person discharging the functions of a magistrate; provided the magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community.

When magistrate may release persons under requisition of security.

CCLIV.

When he must report.

In cases in which a magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security for good behaviour, by order of the High Court or of a Session Circuit, can be safely released without such security, the magistrate shall make an immediate report of the case, with his sentiments, for the orders of the Court which may have required the prisoner to furnish security previously to his release.

CCLV.

How persons who have become sureties may discharge themselves.

Persons who may become sureties for the good behaviour of parties may at all times obtain a discharge from their future responsibility, by delivering up or causing to be delivered up the parties for whom they may have become responsible to the proper magistrate. In such case it shall be competent to such parties to find new sureties.

CCLVI.

Proceeding to compel payment of penalty by sureties.

Whenever the magistrate shall be of opinion, that by reason of an offence proved to have been committed by the person for whose good behaviour security has been given, proceedings should be had upon the bond executed by the surety or sureties, he shall give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and if no sufficient cause shall be shown, the magistrate shall proceed to levy the penalty from such surety or sureties, by the attachment and sale of any of his or their property, in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the Civil Court; and if the penalty be not paid, and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement, by order of the magistrate, in the civil gaol of the station, during a period not exceeding six months.

CHAPTER XIX.

Juries and Assessors.

CCLVII.

Grand juries abolished.

Grand juries shall be abolished.

CCLVIII.

Trials in Madras [*island of Bombay*] to be by jury.

The trial of all offences within the limits of the town of Madras [*island of Bombay*], except offences punishable upon summary conviction, shall be by jury.

CCLIX.

Governor in Council may extend trial by jury to other places.

The provisions of the preceding Article may be extended by the Governor in Council to such places beyond the limits of the town of Madras [*island of Bombay*] as he may see fit.

CCLX.

Trial by jury, before the Session Court, of registered persons.

How the jury is to be constituted.

Criminal trials before the Session Judge, in which a British subject, or an European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor in Council may see fit to extend this rule, registered according to such rules as the Governor in Council shall prescribe, is the defendant or one of the defendants, shall be by jury, of which at least one half shall consist, if such defendant desire it, of persons so registered.

CCLXI.

Joinder of registered and non-registered persons.

Criminal trials before the Session Judge, in which registered and non-registered persons are joined as defendants, shall be by jury, and such joinder shall not be a ground of severance at such trial.

CCLXII.

In such cases, if the non-registered defendant desire it, at least one half of the jury shall consist of non-registered persons, and if the registered defendant also desire to be tried by a jury of which one half are registered persons, then the jury shall be composed of an even number, of which one half shall be registered, and the remaining half non-registered persons. How the jury is to be constituted in such cases.

CCLXIII.

In all trials, whether before the High Court at Madras [*Bombay*] or before the Session Judge, the jury shall consist of not less than three, nor more than nine persons, and unanimity, or a majority of not less than two thirds, with the concurrence of the judge, shall be necessary for a verdict of guilty; and in default of such unanimity, or of such majority, with the concurrence of the judge, the defendant shall be acquitted. Number of which the jury is to consist. Number of voices necessary to a verdict of guilty.

CCLXIV.

Provided that at Madras [*Bombay*] the jury shall, in all cases, consist of nine persons, and at all other places, of such number of persons, not less than three, as the Governor in Council shall from time to time direct. In Madras [*Bombay*] jury not to consist of less than nine.

CCLXV.

For all classes of the community not included in the number of those to whom the mode of trial by jury has by the above provisions been extended, trials before the Session Judge shall be conducted with the aid of two or more assessors as members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of such assessors shall be given separately and discussed; and if any of the assessors or the judge shall desire it, the opinion of the assessors shall be recorded in writing. But the decision is vested exclusively in the judge. Trials before the Session Court with assessors.

CCLXVI.

All persons resident within the limits of the general jurisdiction of the High Court shall, according to such rules, and subject to such qualifications as shall be fixed in manner herein-after mentioned, be deemed capable of serving as jurors and assessors, and shall be liable to be summoned accordingly. Who are capable of serving as jurors and assessors.

CCLXVII.

The High Court shall have power from time to time to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such jurors and assessors, and such other regulations relating thereto, as it may deem expedient and proper; provided that such rules and regulations shall before they are issued have received the sanction of the Governor in Council. High Court to make rules in regard to jurors and assessors.

CHAPTER XX.

Trials before the Court of original Criminal Jurisdiction constituted by a Judge or Judges of the High Court.

CCLXVIII.

When it happens that a Judge of the High Court has sent a case for trial before the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, or that a person is appointed to officiate as a Judge of the High Court, who had previously officiated in the Court by which commitments are made to that Court, and there are before the High Court charges preferred by himself upon which trials are still to be held, it shall nevertheless be competent to him to proceed thereupon as in other cases. A person holding the office of Judge of the High Court may try cases committed by himself.

CCLXIX.

It shall be competent to the High Court to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice. Postponement of trial.

CCLXX.

Commencement of trial.

When the Court is ready to commence the trial, the defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCLXXI.

Plea of guilty.

If the defendant plead "guilty," the Court shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy itself that the defendant comprehends the nature of the charge and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon.

CCLXXII.

Refusal to plead, or plea of "not guilty."

Mode of taking evidence.

If the defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course, and in the manner in which it has heretofore been taken in trials in the Supreme Court, except in so far as it is otherwise provided by this Code of Procedure.

CCLXXIII.

Witness refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI.

CCLXXIV.

Examination of defendant, evidence at the trial.

The examination of the defendant before the magistrate shall be given in evidence at the trial.

CCLXXV.

Court may summon necessary evidence.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case.

CCLXXVI.

Defence.

When the case for the prosecution has been brought to a close, the defendant shall be called upon to enter upon his defence and to produce his evidence.

CCLXXVII.

Witnesses for the defence.

The defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXVI.

CCLXXVIII.

Adjournment.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time.

CCLXXIX.

Jury to attend at adjourned sitting.

In the event of the adjournment of a trial, the jury shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial.

CCLXXX.

Summing up and delivery of verdict.

The Judge shall sum up the evidence on both sides, and the jury shall afterwards deliver their finding upon the charge.

CCLXXXI.

Conviction.

If the defendant is convicted, the Court shall pass sentence upon him according to law.

CHAPTER XXI.

Cases reserved, and Cases certified by the Advocate General.

CCLXXXII.

When any person shall have been convicted of any offence before a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, the Court before which the case shall have been tried may, in its discretion, reserve any question of law which shall have arisen on the trial for the consideration of the High Court, and thereupon shall have authority to respite execution of the sentence on such conviction, or postpone the sentence until such question shall have been considered and decided, as it may think fit; and in either case the Court, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and receive sentence, or to render himself in execution, as the case may be.

Judges of the High Court, in the exercise of original jurisdiction, may reserve cases for the opinion of the High Court.

CCLXXXIII.

When the Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court has reserved a point of law for the opinion of the High Court, the Judge or Judges before whom the trial was held shall, in a case signed by such Judge or Judges, state the point or points of law which shall have been so reserved, and such case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges reserving the point or points shall if possible be one, and the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to pass such judgment and sentence as to the said Judges shall seem right, or to alter the sentence, if any, passed by the Court of original jurisdiction.

Statement of case.

Hearing.

CCLXXXIV.

It shall be lawful for any party upon whom sentence of punishment has been passed by a Court of original criminal jurisdiction constituted by a Judge or Judges of the High Court, to present a memorial to the Advocate General, alleging that there is error in the decision of such Court on a point of law, and distinctly specifying such error. If the Advocate General is of opinion that there is error as set forth in the memorial, or that a point or points of law decided by the Court of original criminal jurisdiction should be further considered, he shall certify the same under his signature on the back of the memorial, and transmit the memorial with such certificate to the Judge or Judges before whom the trial was held; otherwise he shall reject the memorial.

Error in law may be certified by the Advocate General.

CCLXXXV.

Upon the receipt of such memorial, together with the certificate of the Advocate General, the Judge or Judges before whom the trial was held shall transmit the memorial and certificate, with a statement of facts and such remarks as he or they may deem necessary, to the High Court. The case shall be heard by at least three Judges of the High Court, of whom the Judge or one of the Judges before whom the trial was held shall, if possible, be one; and the Judges by whom such case is heard shall have full power and authority to hear and finally determine the said point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said Judges shall seem right.

Statement of case.

Hearing.

CHAPTER XXII.

Trials before the Session Courts.

CCLXXXVI.

Except in the cases referred to in Article CXVI. a Court of Session, as a Court of original criminal jurisdiction, shall not take cognizance of any offence but upon a charge preferred by the Advocate General, or by a magistrate or other officer specially empowered by the Government to act in this behalf.

Cognizance of offences by the Session Court in original jurisdiction.

CCLXXXVII.

A person holding the office of Session Judge may try cases committed by himself.

When it happens that a Zillah Judge has sent a case for trial before the Court of Session, or that a person is appointed to officiate as Judge of a Court of Session, who had previously officiated in the Court by which commitments are made to that Court of Session, and there are before the Court of Session charges preferred by himself upon which trials are still to be held, he shall nevertheless proceed thereupon as in other cases.

CCLXXXVIII.

Postponement of trial.

It shall be competent to a Court of Session to direct the postponement of a trial, where it is satisfied that such delay is proper and essential to the ends of justice.

CCLXXXIX.

Commencement of trial.

When the Court is ready to commence the trial, the defendant shall be brought before it, and the charge shall be read to him, and he shall be asked whether he be guilty or not guilty of the offence charged.

CCXC.

Plea of "guilty."

If the defendant plead "guilty," the Judge shall explain to him the nature of the charge, read to him the clause or clauses of the code relating to the offence charged, and satisfy himself that the defendant comprehends the nature of the charge and the effect of his plea. If the defendant then adhere to his plea of "guilty," the same shall be recorded, and the defendant convicted thereon.

CCXCI.

Refusal to plead, or plea of "not guilty."

If the defendant refuse to plead, or plead "not guilty," the Court shall proceed to try the case, taking all the evidence that is forthcoming in due course.

CCXCII.

How evidence is to be recorded.

The evidence of each witness shall be taken down in writing, by or in the presence and under the superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and when completed shall be read over to the witness and signed by him in the presence of the Judge. In case the witness shall refuse to sign the deposition, the Judge shall sign the same, and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge shall think fit to make. It shall be at the discretion of the Judge to take down or cause to be taken down any particular question and answer, if there shall appear any special reason for doing so, or any person who is a prosecutor or defendant in the case shall require it. If any question put to a witness be objected to by any such person, and the Judge shall allow the same to be put, the question and answer shall be taken down, and the objection and the name of the person making it shall be noticed in taking down the depositions, together with the decision of the Judge upon the objection. The Judge shall also record such remarks as he may think material respecting the demeanour of any witness whilst under examination.

CCXCIII.

Witness refusing to answer may be committed to custody.

If any witness shall refuse to answer such questions concerning the premises as shall be put to him, without offering any just excuse for such refusal, the Court may commit such witness to custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to be examined and to answer concerning the premises; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of Article CIX. or Article CXVI.

CCXCIV.

Examination of defendant, evidence at the trial.

The examination of the defendant before the magistrate shall be given in evidence at the trial.

CCXCV.

Session Court not to receive written confession of guilt made to the police.

It shall not be competent to the Session Court to receive in evidence against the defendant any written admission or confession of guilt or other statement made by him to the darogha, or other officer of police, and by him reduced into writing.

CCXCVI.

Nothing contained in the foregoing Article shall prevent the Court from receiving the evidence of a police officer to any unrecorded admission or confession of guilt, or other statement made to him by the defendant; provided, however, that such evidence shall not be sufficient to warrant a conviction without corroborative evidence. But may receive evidence of a police officer as to unrecorded admission of guilt.

CCXCVII.

It shall be at the discretion of the Court, at any stage of a trial, to summon and examine any witnesses whose evidence it may consider essential to the just decision of the case. Court may summon necessary evidence.

CCXCVIII.

When the case for the prosecution has been brought to a close, the defendant shall be called upon to enter upon his defence, and to produce his evidence. Defence.

CCXCIX.

The defendant shall be allowed to call any witness not previously named by him, but he shall not be entitled to have any other witnesses summoned than those named in the list or lists delivered to the magistrate or other officer by whom he was committed, or held to bail, for trial, except as provided in Article CLXXVI. Witnesses for the defence.

CCC.

The Court may, at its discretion, adjourn the trial to such future time as may be necessary, and so from time to time. Adjournment.

CCCI.

In the event of the adjournment of a trial, the jury or assessors, as the case may be, shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial. Jury or assessors to attend at adjourned sitting.

CCCII.

In cases tried with the aid of assessors, the judge before pronouncing his own opinion, shall call upon the assessors for their opinions. The opinion of each assessor shall be given separately and recorded. In cases tried by jury, the judge shall sum up the evidence on both sides, and the jury shall then deliver their finding upon the charge. Delivery of opinions of assessors. Of verdict of jury.

CCCIII.

If the defendant is convicted, and the case is one which the Session Judge is competent to dispose of finally, he shall proceed to pass sentence upon the defendant according to law. Conviction.

CCCIV.

If the case is one in which, if the defendant be convicted, it belongs to the High Court to pass sentence, the Session Judge shall record the conviction, and refer the case to the High Court, with a statement in writing of his opinion as to the sentence which should be passed upon the defendant; and in cases tried by jury, the Session Judge shall also transmit with the case a report of his direction to the jury. Reference to High Court.

CCCV.

The Session Judges shall transmit to the High Court monthly statements or calendars in such form as the High Court shall prescribe, of all trials held by them, exhibiting the sentence passed upon each defendant, together with an abstract of the evidence given at the trial. Transmission of monthly calendar of trials by Session Judge.

CHAPTER XXIII.

HIGH COURT,

As a Court of Reference.

CCCVI.

Court for hearing of referred trials.

A case referred by a Session Judge for the final judgment and sentence of the High Court shall be heard by a Court constituted by three judges of the said High Court, and the sentence shall be signed by not less than two of such judges.

CCCVII.

Hearing of case referred, tried with assessors.

In cases referred for the final judgment and sentence of the High Court, which have been tried with the aid of assessors, that Court shall revise the record of trial submitted by the Court of Session, and if it approves of the conviction of the defendant, it shall proceed to sentence him to punishment according to law.

CCCVIII.

Acquittal.

If the High Court disapproves of the conviction of the defendant absolutely, it shall pass a judgment of acquittal.

CCCIX.

Difference of opinion between High Court and Session Court as to offence proved.

If the High Court disapproves of the conviction of the defendant, on the ground that the offence proved does not answer to the legal definition of the offence of which he is convicted, it shall annul the conviction; but it shall be competent to the Court to pass a judgment convicting the defendant of the offence which it deems to be proved by the evidence, and to sentence him to punishment according to law.

CCCX.

Competence of Court to direct further inquiry, &c.

In any case referred as above to the High Court, it shall be open to the prosecutor or the defendant to move the Court for further inquiry upon any point bearing upon the guilt or innocence of the defendant; and it shall be competent to the Court, upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case.

CCCXI.

Hearing of case referred, tried by jury.

In cases referred for the sentence of the High Court which have been tried by jury, the Court, on reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, shall determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right.

CHAPTER XXIV.

Finding, Judgment, and Sentence.

CCCXII.

Form of verdict in jury trials.

In any trial by jury, when the jury are unanimous in thinking the defendant guilty, the verdict shall be that the defendant is guilty of the offence specified in the charge, or of the offence specified in such a head of charge, when there are more heads than one. When the jury are not unanimous, but two thirds or more concur in thinking the defendant guilty, the verdict shall be that the defendant is found guilty of the offence specified in the charge, or in such a head of charge as above provided, by a majority consisting of six, seven, eight, as the case may be of the jurors. When any number of the Jurors exceeding one third concur in thinking the defendant not guilty, the verdict shall be that the defendant is not guilty. When the jury or two thirds or more of the jurors, concur in thinking the defendant guilty of an offence, but are doubtful under which of two heads of charge the offence falls, the verdict shall be that the defendant guilty either of the offence charged in such a head, or of the offence charged in such another head of charge.

CCCXIII.

What the judgment is to specify.

When the trial in any Criminal Court is concluded, the Court, in passing judgment, if it convicts the defendant, shall distinctly specify the offence of which, and the clause of the Penal Code under which, it convicts him; or if it be doubtful under which of two clauses the offence falls, shall distinctly express the same, and pass judgment in the alternative, according to Clause 61.

The latter part of the two preceding articles has been framed in accordance with the provisions of the following clause of the Penal Code; "In all cases in which judgment is "given in the manner prescribed in the law of procedure that a person is guilty of an offence, "but that it is doubtful under which of certain penal provisions of this Code he is punishable, "the offender shall be liable to be punished with whatever punishment is common to the penal "provisions between which the doubt lies, and if imprisonment is common to the penal provisions between which the doubt lies, and any one of those provisions admits of simple "imprisonment, the offender may be sentenced to simple imprisonment."

CCCXIV.

Acquittal.

If the defendant, after having been called upon for his defence, is acquitted, the acquittal shall be recorded so as to have a distinct reference to the charge to which the defendant was required to answer, in order to save him from any further prosecution upon the facts to which it related.

CCCXV.

Form of finding and sentence.

The finding and sentence shall be recorded in the following form, or to the same effect:—

In trials by Jury:

When the Jury are unanimous:

The Jury find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* [*sentence*].

2d. The Jury find that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has waged war against the Government of a part of the territories of the East India Company, and has thereby committed an offence punishable under the 109th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

When the Jury are not unanimous, but two thirds or more of the Jurors concur in thinking the defendant guilty:—

3d. A majority of the Jurors, consisting of seven of their number, find that *Z* is guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code. The Court concurs in such finding, and, as *Z* has, by reason of the premises, become liable to cumulative punishment under the 112th Clause of the Penal Code, the Court directs that the said *Z* be [*sentence*].

4th. A minority of the Jury, consisting of two of their number, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has, with the intention of inducing a member of the Council of India to refrain from exercising a lawful power of such member, assaulted such member, and, by so assaulting, has voluntarily caused grievous hurt, not on grave and sudden provocation, and has thereby committed an offence punishable under the 111th Clause of the Penal Code, and by committing such offence, has also committed an offence punishable under the 319th Clause of the Penal Code, and has by reason of the premises become liable to cumulative punishment under the 112th Clause of the Penal Code. The Court concurs in such finding, and directs that the said *Z* be discharged.

5th. When the Jury are not unanimous, but any number of the Jurors exceeding one third concur in thinking the defendant not guilty, the form No. 2 shall be followed.

When the Jury, or two thirds or more of the Jurors, concur in thinking the defendant guilty of an offence, but are doubtful under which of two heads of a charge the offence falls :—

6th. The Jury (*or* The majority of the Jurors consisting of of their number, *as the case may be*,) find that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code. The Court directs (*or*, the Court concurs in such finding, and directs,) that under the provisions of the above-mentioned Clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials with Assessors:

7th. The Court, concurring with the Assessors, (or one or more of the Assessors,) finds that *Z* is guilty of the offence specified in the charge; viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said Z be [*sentence*].

8th. The Court, differing from the Assessors, finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed the offence of rioting, and has thereby committed an offence punishable under the 129th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

9th. The Court, concurring with one of the Assessors, finds that *Z* is guilty either of the offence specified in the first head of charge, or of the offence specified in the second head of charge; viz., that *Z* has either committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code, or that he has committed criminal breach of trust, and has thereby committed an offence punishable under the 387th Clause of the Penal Code; and the Court direct that, under the provisions of the above-mentioned clauses, and the provisions of Clause 61 of the Penal Code, the said *Z* be [*sentence*].

In trials upon a formal charge, without Jury or Assessors:

10th. The Court finds that *Z* is guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 364th Clause of the Penal Code; and the Court directs that the said *Z* be [*sentence*].

11th. The Court finds that *Z* is not guilty of the offence specified in the charge, viz., that *Z* has committed theft, and has thereby committed an offence punishable under the 264th Clause of the Penal Code; and the Court directs that the said *Z* be discharged.

In trials in which no formal charge has been prepared:

12th. The Court finds that *Z* has committed assault, and has thereby committed an offence punishable under the 342d Clause of the Penal Code, and directs that the said *Z* be [*sentence*].

13th. The Court finds that the complaint of assault is not proved, acquits *Z*, and directs that he be discharged.

CCCXVI.

Conviction of offences punishable cumulatively.

Where a person shall be convicted of any two offences which are punishable cumulatively, it shall be lawful for the Court to sentence him for each of the two offences to the penalties prescribed by the Penal Code in respect of each of the two offences, provided that the punishment to which such person is sentenced for each of the two offences is within the ordinary penal jurisdiction of the Court; and it shall not be necessary for the Court, only by reason of the cumulative punishment being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

CCCXVII.

Where a person shall be convicted of several offences at the same time, punishable under the same or different clauses of the Penal Code, it shall be lawful for the Court to sentence him to the several penalties prescribed by the Code in respect of the several offences of which he shall have been so convicted, provided that the punishment to which such person is sentenced for each offence is within the ordinary penal jurisdiction of the Court, such penalties, when consisting of imprisonment, to commence the one after the expiration of the other; and it shall not be necessary for the Court, only by reason of the aggregate punishment for the several offences being in excess of the punishment which the Court is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court.

Conviction of several offences.

CCCXVIII.

Where sentence shall be passed on a person already under sentence of imprisonment for another offence, it shall be lawful for the Court to award imprisonment on the subsequent conviction, to commence at the expiration of the imprisonment to which such offender shall have been previously sentenced; and if empowered to pass sentence of transportation or banishment, the Court may award such sentence on the subsequent conviction to commence immediately, or at the expiration of the imprisonment to which such person shall have been previously sentenced.

Judgment on offender already imprisoned under sentence for another crime.

CCCXIX.

A party who has once been tried upon a formal charge, prepared as directed in the rules in the Code of Procedure for preparing criminal charges, shall not be liable to a renewed prosecution.

Party tried upon formal charge not liable to renewed prosecution.

CCCXX.

In cases referred by the Session Judge for the final sentence of the High Court, the proper officer of the Court shall, within three days after passing of the sentence, or sooner if practicable, transmit a copy of it, under the seal of the High Court, and attested with his official signature, to the Session Judge, who shall immediately issue a warrant to the magistrate to cause the sentence to be carried into execution. The magistrate, upon the receipt of the warrant, shall cause the sentence to be executed, and return the warrant to the Session Judge, with an indorsement attested by his official seal and signature, certifying the manner in which the sentence has been executed.

Execution of sentence of the High Court in cases referred by the Session Judge.

CCCXXI.

In cases tried by the Court of original jurisdiction at Madras [*Bombay*], constituted by one or more judges of the High Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the chief magistrate of Madras [*Bombay*].

High Court, in original jurisdiction, to direct warrant of execution to chief magistrate of Madras [*Bombay*].

CCCXXII.

In cases tried by the Session Court, the Court shall forward a copy of its sentence, together with a warrant for the execution of the same, directed to the magistrate of the district in which the trial was held.

Session Court to direct warrant to district magistrate.

CCCXXIII.

Upon the receipt of a warrant under of either the two last preceding articles, the magistrate shall cause the sentence to be executed, and shall return the warrant when the sentence has been fully executed to the Court from whence it issued, with an indorsement under his official seal and signature, certifying the manner in which the sentence has been executed.

Execution of sentence under two foregoing articles.

CCCXXIV.

In every case of imprisonment under the sentence of the High Court, whether as a Court of reference or of original jurisdiction, of the Session Court, and of the magistrate, the magistrate shall issue his warrant to the gaoler, stating the offence of which the defendant has been convicted, and the period during which he is to be imprisoned. In like manner, in every case of imprisonment under the sentence of a Subordinate Criminal Court, the Court passing the sentence shall issue its warrant to the same effect.

Warrant of commitment in cases of imprisonment.

CHAPTER XXV.

High Court as a Court of Revision.

CCCXXV.

Revision in cases of illegal sentence.

The High Court, in any case tried by the Session Court, in which upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the sentence passed is one which cannot lawfully be passed on a person convicted of the offence as stated in the abstract statement or calendar, shall annul the sentence, and shall certify to the Session Court the sentence which may lawfully be passed for such offence; and thereupon the Session Court shall pass a new sentence according to law, and shall amend the record in accordance therewith.

CCCXXVI.

When the sentence is too severe.

The High Court, in any case tried by the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the sentence passed upon any person convicted by the Session Court is too severe, may mitigate the sentence to such extent as to the said High Court shall seem proper, and shall certify such mitigated sentence to the Session Court, which shall thereupon amend the record in accordance therewith, and proceed to give effect to the sentence of the High Court.

CCCXXVII.

When in trials with assessors the judgment is not warranted by the evidence.

The High Court, in any case tried by the Session Court, except cases tried by Jury, in which, upon a review of the abstract statements or calendar of prisoners punished without reference, it shall appear to it that the judgment pronounced on any prisoner was not warranted by the evidence, may, if it thinks fit, require the Judge of the Court in which the conviction was had, to certify under his hand all or any part of the evidence taken in the case affecting such prisoner, with any observation which the Judge may be desirous of making in explanation of the judgment; and thereupon the High Court may annul such judgment, if such judgment shall appear to it not warranted by the evidence, and shall certify its proceedings to the Court in which the conviction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, amend the record in accordance therewith.

CCCXXVIII.

Revision in jury trials.

The High Court, in any case tried by the jury in Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that there has been error in the decision of the Session Court on a point or points of law, or that a point or points of law should be considered by the High Court, may call for the record, together with a report of the Session Judge's direction to the jury, and upon reviewing the depositions of the witnesses, the direction of the Judge, and the conviction, may determine any point of law arising out of the case, and thereupon pass such judgment and sentence as to the High Court shall seem right. The High Court shall certify its proceedings to the Court in which the conviction was had, which shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, amend the record in accordance therewith.

CCCXXIX.

In cases of sentence by Session Judge, which ought to have been referred.

The High Court, in any case tried in the Session Court, in which, upon a review of the abstract statements or calendars of prisoners punished without reference, it shall appear to it that the case is one which ought to have been referred for the judgment and sentence of the High Court, may, if it think fit, annul the sentence passed by the Session Court, and require the Session Judge to refer the case, and thereupon the High Court shall pass such judgment and sentence as to the said High Court shall seem right.

CCCXXX.

General power of revision by the High Court.

The High Court may, whenever it thinks fit, call for the whole record of any criminal trial in any Criminal Court within its jurisdiction, and pass thereon such orders as it thinks fit, but not so as to enhances the punishment awarded, or punish any person acquitted in the Court which tried the case; provided that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from determining any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

CHAPTER XXVI.

Appeals.

CCCXXXI.

No appeal in cases of acquittal.

There shall be no appeal from a judgment of acquittal passed by any Criminal Court.

CCCXXXII.

Appeal in cases of conviction.

An appeal shall lie in all cases of conviction by the magistrates in the mofussil, and by the Judges of the Subordinate Criminal Courts, to the Session Judge; and in all cases of conviction by the Session Judges in the exercise of original jurisdiction, and by the magistrates of Madras [*Bombay*], to the High Court.

CCCXXXIII.

Proceeding in appeals.

Any person convicted by a judgment of any of the Criminal Courts of original jurisdiction mentioned in the last preceding article, may present a petition of appeal to the Court of appellate jurisdiction, which may call for the record of conviction, and confirm, or amend, or reverse the finding and sentence of the lower Court, but not so as to enhance the punishment awarded; provided, that if the party appealing be in gaol, he shall be at liberty to present his petition of appeal to the magistrate in charge of the same, who shall thereupon forward it to the proper appellate authority; provided also, that it shall not be competent to the High Court to reverse the verdict of a jury on the facts of the case in a case tried by jury before the Session Court, but such verdict shall not prevent the High Court from trying any point of law arising out of the case, or from altering the sentence passed in such case by the Session Court.

CCCXXXIV.

Court of Appeal may direct further inquiry, &c.

In any case appealed as above, except a case tried by jury, it shall be open to the appellant to move the Appellate Court for further inquiry; and it shall be competent to the Court upon such application, or of its own accord, to direct such inquiry to be made, and additional evidence to be taken on any point, the further investigation of which is essential to the just decision of the case. The Appellate Court shall at the same time direct whether the lower Court shall pass a fresh sentence in the case, or certify the result of the further inquiry and the additional evidence to the Appellate Court.

CCCXXXV.

Court of Appeal, how to proceed in a case of conviction by an incompetent Court.

When a magistrate or Judge of a Subordinate Criminal Court has convicted a person of an offence not triable by such magistrate or judge, it shall be competent to the Court of Appellate Jurisdiction to annul the conviction and sentence of the lower Court, and to direct the trial of the case by a Court of competent jurisdiction.

CCCXXXVI.

Appeals from orders in proceedings other than trials.

An appeal shall lie from all orders in proceedings other than criminal trials, passed by the magistrates in the mofussil and by the judges of the Subordinate Criminal Courts, to the Session Court; and by the magistrates of Madras [*Bombay*] to the High Court; and it shall be competent to the Courts of Appellate Jurisdiction to pass upon such appeals such orders as they shall deem just and proper.

CCCXXXVII.

Period for presenting petition of appeal.

The petition of appeal from a sentence of the Session Judge must be presented within ninety days immediately following and exclusive of the day on which sentence was passed; and from the sentence or order of any other Court within thirty days, calculated in the same manner.

CCCXXXVIII.

Result when Appellate Court is equally divided.

Where the Appellate Court consists of more than one Judge, if there should be a difference of opinion among the Judges, and the Court be equally divided, the judgment of the lower Court shall be affirmed.

CCCXXXIX.

Finality of orders in appeal.

Except as provided in Article CCCXXX., the sentences passed by the Appellate Court upon criminal appeals shall be final.

CCCXL.

Powers of Session Judge and magistrate to regulate the proceedings of subordinate Courts.

It shall be at all times lawful for a Session Judge and for a magistrate, or other officer exercising the powers of a magistrate, to call for and examine the records of any Court immediately subordinate to their respective Courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate Courts; but it shall not be lawful for any other Court than the High Court to alter any sentence of any subordinate Court except upon appeal by parties concerned duly made according to the foregoing provisions.

CCCXLI.

Power of Session Court to direct bail.

The Session Court shall have a discretionary power of directing that any defendant shall be admitted to bail before a magistrate or Subordinate Criminal Court, or that the bail required by a magistrate or Subordinate Criminal Court be reduced; and also of directing that a party not in custody be admitted to bail on his surrendering to a warrant.

CCCXLII.

Power of High Court to direct bail.

The High Court shall have the like discretionary power in regard to any defendant, or any party, charged with an offence before any Criminal Court.

SCHEDULE A.

Explanatory Notes.—1st.—The entries in the 2d and 5th Columns of the Schedule, headed "Offence" and "Penalty," are not intended as definitions of the offences and penalties described in the several corresponding clauses of the Penal Code, or even as abstracts of those clauses, but merely as references to the subject of the clause of the Code, the Number of which is given in the 1st Column.

2d.—The Term "Bailable or not," in Column 3., is to be taken in connexion with the provisions of Articles CXLIV. and CXLV. of the Code of Criminal Procedure.

3d.—No offence is triable by a Court inferior to the Court specifically mentioned in Column 4. as competent to try such offence; but offences are triable by Courts superior to the Court so mentioned.

4th.—The entries in the last Column show when any offence entered in Column 2. admits of cumulative punishment, and the number of the clause expressly providing for such punishment. The circumstances under which cumulative punishment may be inflicted will be ascertained on reference to the clauses themselves.

CHAPTER IV.—OF ABETMENT.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
88	Previous abetment of any offence by instigation, if the offence is committed in consequence.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	The punishment of the offence - -	Cumulative, Clause 89.
90	Previous abetment of any offence punishable with imprisonment, by instigation, with actual delivery of a bribe.	Idem -	Idem - - -	Imprisonment to ¼ of the longest term for that offence, or fine as for that offence, or both.	
91	Previous abetment of any offence punishable with imprisonment, by instigation, with threat of injury.	Idem -	Idem - - -	Idem - - - - -	Cumulative, Clause 92.
93	Previous abetment by a person present instigating another to persist in the commission of an offence punishable with rigorous imprisonment for one year and upwards.	Idem -	Idem - - -	Imprisonment of either description, i. e. rigorous or simple, to ¼ of the longest term for that offence, or fine, or both.	
94	Previous abetment by instigating the public, or more than 10 persons, to the commission of any offence.	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
95	Previous abetment of an offence by conspiracy, if the offence is committed in consequence.	Idem -	Idem - - - -	See Clause 88.	
96	Previous abetment by conspiracy of any offence punishable with imprisonment, if any act or illegal omission takes place in consequence in order to the offence.	Idem -	Idem - - - -	See Clause 90.	

CHAPTER IV.—Of Abetment—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty	6. When admitting of cumulative Punishment.
97	Previous abetment by any act or illegal omission intended to aid the commission of an offence, if the offence is committed.	According as the offence abetted is bailable or not.	By the Court by which the offence abetted is triable.	See Clause 88.	
98	When in an attempt to commit an offence, or in the commission, or in consequence of the commission of an offence, a different offence is committed which was likely to be committed.	Bailable if both offences are bailable.	By the Court by which the graver offence is triable.	The previous abettor of the first offence liable to the punishment of the last-mentioned offence.	Cumulative, Same clause.
99	When in consequence of previous abetment an offence is committed, which would be a different offence, but for some misconception of the doer from which the abettor is free, or but for some intention, &c. of the doer unknown to the abettor.	According as the offence contemplated by the abettor is bailable or not.	By the superior Court by which either the offence committed or abetted is triable.	The abettor liable to the same punishment as if no such misconception, &c. existed.	
100	When anything is done in consequence of previous abetment which would be a certain offence, but for the youth, &c. of the doer, or for some misconception on his part from which the abettor is free.	According as the offence to which the contemplated act, if committed without such exceptional circumstances, would have amounted, is bailable or not.	By the Court by which the contemplated act when an offence is triable.	See Clause 88.	
101	A public servant concealing by any act or illegal omission a design to commit any offence which it is his duty to prevent, if that offence is committed.	See 96 -	See 96 - - -	Imprisonment of either description to ½ of the longest term of imprisonment for that offence, or fine, or both.	
102	Concealing by any act or illegal omission a design to commit any offence punishable with rigorous imprisonment for one year or upwards, if the offence is committed.	Idem -	Idem - - -	See Clause 93.	
105	Subsequent abetment by intentionally omitting to give information of an offence committed, as required by law.	Bailable -	Magistrate - -	Imprisonment of either description to 6 months, or fine, or both.	

106	Subsequent abetment of any offence punishable with rigorous imprisonment for one year or upwards, by causing marks of the commission of that offence to disappear.	Idem ..	By the Court by which the offence abetted is triable.	Imprisonment of either description to $\frac{1}{14}$ of the longest term for that offence, or fine, or both.	
107	Subsequent abetment of an offence punishable with imprisonment for 7 years or upwards by harbouring the offender to screen him from punishment. *Exception.*—Not to extend to harbour given by relations specified.	Idem -	Magistrate - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
108	Subsequent abetment by assisting the offender to retain or dispose of property fraudulently acquired.	Idem -	See 106 - - -	Imprisonment of either description to 1 year, or fine, or both.	
	CHAPTER V.—OFFENCES AGAINST THE STATE.				
109	Waging or attempting to wage war, or previously abetting the waging of war against the Government by instigation, conspiracy, or aid.	Not bailable -	High Court or Session Court	Death, or Transportation for life, or imprisonment of either description for life, and forfeiture of all property.	
110	Previous abetment of the last offence by concealing a design to commit it.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
111	Assaulting, &c. the Governor General of India, or the Governor, or Deputy Governor, or a Member of Council of any Presidency, to compel or restrain the exercise of his lawful powers, or attempting such offence.	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	Cumulative, Clause 112.
113	Attempting to excite disaffection to the Government.	Bailable -	Idem - - -	Banishment for life, or for any term, from the Company's Territories, to which fine may be added, or simple imprisonment to 3 years, to which fine may be added, or fine simply.	
114	Waging war, &c. against any Asiatic power in alliance with the Government.	Not bailable -	Idem - - -	Banishment, or imprisonment of either description to 3 years, to which fine may be added, or fine simply.	
115	Making preparation within the Company's Territories to commit, or to take refuge after committing depredations on the territories of any power at peace with the Government.	Idem -	Idem - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine and forfeiture of specific property.	

CHAPTER VI.—OFFENCES RELATING TO THE ARMY AND NAVY.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
116	Previously abetting the commission of Mutiny by a Soldier or Sailor of the King or of the East India Company.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
117	Previous abetment of Mutiny by such a Soldier or Sailor, when Mutiny is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment of either description for life, or a term not less than 3 years; also liable to fine.	
118	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
119	Previous abetment of an assault by such a Soldier or Sailor on his Superior Officer, if the assault is committed.	Idem - -	Idem - - - -	See Clause 116.	
120	Previous abetment of the desertion of such a Soldier or Sailor.	Bailable -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
121	Previous abetment of the desertion of such a Soldier or Sailor, if desertion is committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	
122	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy.	Not bailable -	Idem - - -	See Clause 116.	
123	Previous abetment of the desertion of such a Soldier or Sailor to an Enemy, if such desertion is committed in consequence.	Idem - -	Idem - - -	Transportation for life; imprisonment which may extend to life; also liable to fine.	
124	Subsequent abetment by harbouring such a Soldier or Sailor who has deserted. *Exception.*—Not extended to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
125	Previous abetment of a breach of Military or Naval discipline by such a Soldier or Sailor committed in consequence.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
126	Any person wearing any garb or carrying any token used by a Soldier in the service of the King or of the East India Company, with the intention that it may be believed that he is such a Soldier.	Idem - -	Idem - - -	See Clause 124.	

CHAPTER VII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

129	Rioting—joining or continuing in a riotous assembly.	Bailable -	Magistrate - - -	Imprisonment of either description to 6 months, or fine, or both.	Cumulative, Clause 134.
130	Rioting by joining or continuing in a riotous assembly, knowing that such assembly has been commanded to disperse.	Idem - -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	Cumulative, Clause 131.
132	Rioting, being armed with any weapon - -	Idem - -	Idem - - - -	Idem.	
133	If murder be committed in a riot by one of the rioters, every other rioter shall be punished under this Clause.	Idem - -	High Court or Session Court	Imprisonment of either description to 5 years, or fine, or both.	
135	Intentionally joining or continuing in *any* assembly of 12 or more persons, knowing that it has been commanded to disperse.	Idem -	Magistrate - -	Simple imprisonment to 1 month, or fine, or both.	
136	Malignantly and wantonly giving provocation, intending to cause rioting, if rioting be committed.	Idem - -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 137.

CHAPTER VIII.—OF THE ABUSE OF THE POWERS OF PUBLIC SERVANTS.

138	Being or expecting to be a public servant, and accepting for himself or for another any gratification as a motive for doing or forbearing to do any official act, favoring or disfavoring any party, &c.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
139	Accepting any gratification as a motive for inducing by personal influence any public servant to do or forbear to do any official act, &c. &c.	Idem - -	High Court or Session Court	Simple imprisonment to 6 months, or fine, or both.	
140	A public servant abetting, previously or subsequently, the offence in the last Clause with reference to himself.	Idem - -	Idem - - -	Simple imprisonment to 3 years, or fine, or both.	If any person, in doing anything whereby he commits an offence under any clause in this Chapter, also commits an offence under any clause con-
141	A Judge accepting a gift from a plaintiff or defendant in any proceeding in his Court.	Idem - - -	Idem - - -	Simple imprisonment to 2 years, or fine, or both.	
142	A Judge pronouncing a decision which he knows to be unjust.	Idem - -	Idem - - -	Idem.	
143	A Judge for any purpose of favour or disfavor to any party disobeying the Law of Procedure.	Idem - -	Idem - - - -	Simple imprisonment to 1 year, or fine, or both.	

CHAPTER VIII.—Of the Abuse of the Powers of Public Servants—*continued.*

1. Clause.	2 Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
144	Any Officer authorized to commit to confinement, or keep in confinement, knowingly committing or keeping any person unjustly.	Bailable -	High Court or Session Court	See Clause 141.	tained in any other Chapter of the Penal Code, the punishment shall be cumulative. Clause 151.
145	A public servant disobeying the law for his guidance, intending to cause injury to any person or to save any person from legal punishment.	Idem - -	See 138 - -	See Clause 143.	
146	A public servant charged with the preparation of any document, framing it incorrectly, intending to cause injury to any person, &c.	Idem - -	Idem - - -	See Clause 138.	
147	A public servant bound not to engage in trade engaging in trade.	Idem - -	Idem - - -	Simple imprisonment to 3 months, or fine, or both.	
148	A public servant bound not to purchase or bid for certain property purchasing or bidding for the same.	Idem - -	Idem - -	See Clause 147.	
149	A public servant knowingly disobeying a lawful order of his official superior, or insulting him, or neglecting his duty.	Idem - -	Idem - - -	Fine to 3 months' Salary; or to thrice the amount of legal fees received by him in one month, or, if paid in land, to ¼th of the annual value of such land.	
150	Wearing the garb, &c. of a public servant in order to pass off as such.	Idem - -	Magistrate - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	

CHAPTER IX.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

1. Clause.	2 Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
152	Absconding to avoid being served with a summons or notice.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
153	Preventing the service or the affixing of any summons, or notices, or the removal of it when it has been affixed; or preventing a proclamation.	Idem - -	Idem - - -	Idem - - - - - -	Cumulative, Clause 154.
155	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Idem - -	Idem - - -	Idem.	

156	Intentionally omitting to produce or deliver up any document, being legally bound to produce or deliver up the same.	Idem - -	Idem - - -	Idem.	
157	Intentionally omitting to give any notice, or furnish information on any subject as required by law.	Idem - -	Idem - - -	Idem.	
158	Knowingly furnishing false information to a public servant.	Idem - -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
159	Refusing to take an oath, &c. to state the truth -	Idem - -	Idem -	Imprisonment of either description to 6 months, or fine, or both.	
160	Being on oath to state the truth, refusing to answer questions.	Idem - -	Idem - - -	Idem.	
161	Refusing to sign a statement made to a public servant when legally required to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
162	Knowingly stating to a public servant on oath as true that which is false.	Idem - -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
163	Giving false information to a public servant in order to cause him to use his lawful power to the loss or annoyance of any person.	Idem - -	Idem - - -	See Clause 158.	
164	Preventing or attempting to prevent any public servant empowered to enter or remain in any place, or make any search, or examine anything, or put any mark upon anything, from exercising such power, or causing annoyance to him in the exercise of it.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine of Rupees 500, or both.	Cumulative, Clause 165.
166	Resisting the taking of any property by the lawful authority of a public servant.	Idem - -	Idem - - -	See Clause 159 - - -	Cumulative, Clause 167.
168	Obstructing a sale held under lawful authority -	Idem - -	Idem - - -	See Clause 152 - - -	Cumulative, Clause 169.
170	Bidding for property at a lawfully authorized sale on account of a person under a legal incapacity to purchase it, or bidding without intending to perform the obligations incurred thereby.	Idem - -	Idem - - -	Imprisonment of either description to 1 month, or fine, or both.	
171	Any person resisting the lawful taking into custody of himself or of any other.	Idem - -	Idem - - -	See Clause 159 - - - -	Cumulative, Clause 172.
173	Rescuing or attempting to rescue any person from lawful custody.	Idem - -	Idem - -	See Clause 59 - - - -	Cumulative, Clause 174.
175	Escaping from lawful custody, or attempting to do so.	Idem - -	Idem - - -	Imprisonment of either description to 3 months, or fine, or both.	Cumulative, Clause 176.

CHAPTER IX.—Contempts of the lawful Authority of Public Servants—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
177	Harbouring a person to prevent his being taken into lawful custody. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rs. 200, or both.	
178	Harbouring a person escaped from custody - *Exception.*—As in Cl. 177.	Idem -	Idem - - -	Imprisonment of either description to 2 months, or fine to Rs. 500, or both.	
179	Insulting or interrupting a public servant in the discharge of his duty.	Idem -	Idem - - -	See Clause 164 - - - -	Cumulative, Clause 180.
181	Intentionally omitting to give assistance to a public servant as directed by law.	Idem -	Idem - - -	See Clause 177.	
182	Disobeying the local order of a public servant, if such disobedience cause danger to human life, health, or safety, or any obstruction or annoyance to persons lawfully employed, or rioting, or risk of rioting.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 183.
184	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 185.
186	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Idem -	Idem - - -	Idem - - - -	Cumulative, Clause 187.

CHAPTER X.—OFFENCES AGAINST PUBLIC JUSTICE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
190	Giving or fabricating false evidence - -	Bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
191	Giving or fabricating false evidence to cause any person to be convicted of a capital offence.	Not bailable -	Idem - - -	To transportation for life or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	
192	Giving or fabricating false evidence to cause any person to be convicted of an offence punishable with imprisonment for more than 7 years.	Idem -	Idem - - - -	The punishment of that offence.	

193	Removing, concealing, &c. any property to prevent its being taken as a forfeiture, or in satisfaction of a fine under a sentence, or in execution of a decree.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
194	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Idem -	Idem - - -	Idem.	
195	In a declaration which a Court of Justice is bound to receive as evidence, knowingly stating as true that which is false touching a material point.	Idem -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
196	Fraudulently or for annoyance instituting a civil suit without just grounds.	Idem -	Idem - - -	See Clause 193.	
197	Insulting or interrupting a Court of Justice -	Idem -	Magistrate - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 198.
199	Threatening any person to induce him to refrain from instituting or defending any civil suit, or from taking any legal steps in such a suit, or from giving evidence in any judicial proceeding.	Idem -	Idem - - -	See Clause 195 - - -	Cumulative, Clause 200.
201	Escaping or attempting to escape from custody under a lawful sentence.	Not bailable -	Idem - - -	See Clause 195 - - - -	Cumulative, Clause 202.
203	Returning from transportation not for life -	Idem -	High Court or Session Court	Transportation for life, also liable to fine.	
204	Returning from transportation for a term of years, and banishment for life, under a commuted sentence.	Idem -	Idem - - -	Idem.	
205	Returning from banishment for a term - -	Idem	Idem - - -	Transportation which may extend to 7 years and banishment for life.	
206	Harbouring any person escaped from custody under sentence, or returned from transportation or banishment. *Exception.*—Not to extend to harbouring by relations specified.	Bailable -	Magistrate - -	Simple imprisonment to 6 months, or fine to Rupees 1,000, or both.	
207	Having accepted a conditional remission of punishment, and violating the condition.	Not bailable -	High Court or Session Court	Punishment of original sentence, or if part undergone, the residue.	

CHAPTER XI.—OFFENCES RELATING TO THE REVENUE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
209	Smuggling - - - - -	Bailable -	Magistrate - -	Imprisonment of either description to 3 months, or fine to Rupees 500, added to 5 times the value of the property smuggled, or both.	
210	Receiving smuggled goods knowing them to be smuggled.	Idem -	Idem - - -	Idem.	
211	Placing a vessel in a forbidden situation - -	Idem -	Idem - - -	Fine to Rupees 1,000.	
212	Cultivating, collecting, or manufacturing any prohibited article.	Idem -	Idem - - -	Simple imprisonment to 3 months, or fine to Rupees 500, or both.	
213	Making or having in possession any implement, material, or receptacle, in order to committing any offence under the last Clause.	Idem -	Idem - - -	Idem.	
214	Selling any prohibited article - - -	Idem -	Idem - - -	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.	
215	Having in possession any prohibited article -	Idem -	Idem - - -	Fine to twice the value of the article.	
216	Omitting to put a mark on any article as required by law.	Idem -	Idem - - -	Fine to the value of the article.	
217	Performing any part of the process of counterfeiting a stamp from which the Government derives a revenue.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
218	Having in possession any implement, &c. for counterfeiting such stamp.	Idem -	Idem - - -	Idem.	The punishments provided by this Chapter are independent of any confiscation to which the property, with respect to which the offences defined in this Chapter have been committed, is liable under any law. Clause 229.
219	Making any implement for counterfeiting such stamp.	Idem -	Idem - - -	Idem.	
220	Selling any stamp known to be counterfeit -	Idem -	Idem - - -	Idem.	
221	Having in possession a stamp, knowing it to be a counterfeit of a Government stamp, intending it for sale.	Idem -	Idem - - -	Idem.	
222	Using a counterfeit stamp as genuine - -	Idm -	Magistrate - -	Imprisonment of either description to 6 months, or fine, or both.	
223	Effacing from a stamp a writing in order that such stamp may be used for a different writing.	Idem -	Idem - -	Imprisonment of either description to 3 months, or fine to an amount equal to Rupees 500, added to 5 times the price of such stamp, or both.	

224	Using for any writing a stamp known to have been before used for a different writing.	Idem	Idem	Idem.	
225	Establishing or maintaining an illegal post, or conveying or delivering letters, &c. by such post.	Idem	Idem	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
226	Being in charge of any letter or packet on board of a vessel, and intentionally omitting to deliver the same as required by law.	Idem	Idem	Fine.	
227	Being in charge of a Ship and refusing to receive on board any letters, &c. as legally required by a public servant.	Idem	Idem	Fine to Rupees 500.	
228	A person having a licence to cultivate, collect, manufacture, import, export, convey, sell, or have in possession any article, acting contrary to the conditions of the licence.	Idem	Idem	Fine to Rupees 200.	

CHAPTER XII.—OFFENCES RELATING TO COIN.

232	Counterfeiting Coin	Not bailable	High Court or Session Court	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
233	Counterfeiting the King's or Company's Coin	Idem	Idem	Imprisonment of either description, maximum 7 years, minimum 2 years, also liable to fine.	
234	Making a die for counterfeiting Coin	Idem	Idem	See Clause 232.	
235	Making a die for counterfeiting the King's or Company's Coin.	Idem	Idem	See Clause 233.	
236	Having in possession any implement or material for committing an offence under any of the four last preceding Clauses.	Idem	Idem	See Clause 232.	
237	Previously abetting the counterfeiting of the King's or Company's Coin without the Company's Territories.	Idem	Idem	See Clause 233.	
238	Importing into or exporting from the Company's Territories counterfeit Coin to be passed as genuine.	Idem	Idem	See Clause 232.	
239	The same with respect to the King's or Company's Coin.	Idem	Idem	See Clause 233.	

CHAPTER XII.—Offences relating to Coin—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
240	Having any counterfeit Coin, known to be such when it came into possession, and delivering, &c. the same to any person with the intention that it shall pass as genuine.	Not bailable -	High Court or Session Court	See Clause 232.	
241	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
242	Delivering, &c. to any person any Coin as genuine, knowing it to be counterfeit.	Idem -	Magistrate - - -	Fines to 10 times the value of the genuine Coin.	
243	Possessing counterfeit Coin, knowing it to be such when it came into possession, intending that it may pass as genuine.	Idem -	High Court or Session Court	See Clause 232.	
244	The same with respect to the King's or Company's Coin.	Idem -	Idem - - -	See Clause 233.	
245	A person employed in a Mint intentionally causing by any act or omission any Coins issued therefrom to be of a weight or composition different from that fixed by law.	Idem -	High Court - -	Idem.	
246	Diminishing the weight or altering the composition of any Coin intending that it shall pass as unaltered.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 1 year, minimum 3 months, also liable to fine.	
247	The same as to the King's or Company's Coin -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 1 year, also liable to fine.	
248	Possessing any implement or material intending to employ the same for committing an offence under any of the three last preceding Clauses.	Idem -	Idem - - -	See Clause 246.	
249	Possessing Coin altered as in Clause 246, having known it to be so altered when it came into possession, and delivering, &c. the same to any person with intention that it may pass as unaltered.	Idem -	Idem - - -	Idem.	
250	The same with respect to the King's or Company's Coin.	Idem -	Idem - - - -	See Clause 247.	

251	Possessing Coin, known when it came into possession to have been dealt with as in Clause 246, intending to cause the same to be in circulation.	Idem	Idem	See Clause 246.	
252	The same with respect to the King's or Company's Coin.	Idem	Idem	See Clause 247.	
	CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.				
253	•Fraudulently using a false balance	Bailable	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.	
254	Fraudulently using a false weight or measure	Idem	Idem	Idem.	
255	Having a false balance, weight or measure for fraudulent use.	Idem	Idem	Idem.	
256	Making a false balance, weight or measure for fraudulent use.	Idem	Idem	Idem.	
	CHAPTER XIV.—OFFENCES AFFECTING PUBLIC HEALTH, SAFETY, AND CONVENIENCE.				
257	Malignantly or wantonly doing any act known to be likely to spread the infection of a dangerous disease.	Bailable	Magistrate	Imprisonment of either description to 6 months, or fine, or both.	
258	Knowingly disobeying any rule of the Quarantine laws.	Idem	Idem	Idem.	
259	Adulterating food or drink intended for sale so as to make the same noxious.	Idem	Idem	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	
260	Selling any food or drink as wholesome knowing the same to be noxious.	Idem	Idem	Idem.	
261	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Idem	Idem	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	
262	Offering for sale or issuing from a Dispensary any drug or medical preparation known to have been adulterated.	Idem	Idem	Idem.	
263	Knowingly selling or issuing from a Dispensary any drug or medical preparation as a different drug or medical preparation.	Idem	Idem	Idem.	

CHAPTER XIV.—Offences affecting Public Health, Safety, and Convenience—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
264	Causing the atmosphere in any public way to be noxious or offensive.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
265	Driving or riding on a public way so rashly or negligently as to indicate a want of due regard for human life.	Idem -	Idem - - -	Imprisonment of either description to 6 months. or fine to Rupees 2,000, or both.	
266	Navigating any vessel so rashly or negligently, &c.	Idem -	Idem - - - -	Idem.	
267	Conveying for hire any person in a vessel in such a state, or so loaded, as to endanger his life.	Idem -	Idem - - -	Idem.	
268	Dealing with any poisonous substance so rashly or negligently as to indicate a want of due regard for human life.	Idem -	Idem - - - -	Idem.	
269	Dealing with fire or any combustible matter so rashly or negligently, &c.	Idem -	Idem - - -	Idem.	
270	So dealing with any explosive substance -	Idem -	Idem - - - -	Idem.	
271	So dealing with any machinery - - -	Idem -	Idem - - -	Idem.	
272	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Idem -	Idem - - - -	Idem.	
273	A person omitting to take order with any animal in his possession so as to guard against danger to human life or of grievous hurt from such animal.	Idem -	Idem - - -	Idem.	
274	Causing danger, obstruction, or annoyance in any public way or line of navigation.	Idem -	Idem - - - -	Fine to Rupees 200.	

CHAPTER XV.—OFFENCES RELATING TO RELIGION AND CASTE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
275	Destroying, damaging, or defiling a place of worship or sacred object with intention to insult the religion of any class of persons.	Bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
276	Causing a disturbance to an assembly engaged in religious worship, and assaulting or threaten ing any person engaged in such worship.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 277.

278	Disturbing a religious assembly in a place of worship.	Idem	Idem	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 279.
280	Trespassing in a place of sepulture, offering indignity to a human corpse, or disturbing a funeral with intention to wound the feelings or to insult the religion of any person.	Idem	Idem	See Clause 278	Cumulative, Clause 281.
282	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feelings.	Idem	Idem	Idem.	
283	Doing or threatening to do any act with intention to cause it to be believed that some person is thereby rendered an object of divine displeasure, &c. &c.	Idem	Magistrate	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
284	Committing an assault with intention to cause a person to lose caste, or inducing him to do something ignorantly whereby he will incur loss of caste.	Idem	Idem	Imprisonment of either description to 6 months, fine to Rupees 2,000, or both.	
285	Intentionally causing the food of a person to be in a state in which he, according to his religion or caste, cannot use it.	Idem	Idem	Fine to Rupees 50.	
286	If the last offence is repeated after a conviction	Idem	Idem	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	
	CHAP. XVI.—ILLEGAL ENTRANCE INTO AND RESIDENCE IN THE TERRITORIES OF THE EAST INDIA COMPANY.				
287	A subject of the King, not a native of the Company's Territories, omitting on his arrival by Sea in those Territories to report his name, place of destination, and object of pursuit.	Bailable	Magistrate	Fine to Rupees 1,000.	
288	A subject of the King, not a native of the Company's Territories, entering the said Territories by land without legal authority.	Idem	Idem	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
289	A subject of the King, &c. entering or residing in a certain part of the said Territories without the licence required by law.	Idem	Idem	Simple imprisonment to 3 months, or fine to Rupees 2,000, or both.	
290	Repeating the last offence after conviction	Idem	High Court or Session Court	Banishment for life or for any term, or simple imprisonment to 1 year, to which fine may be added.	

CHAPTER XVII.—OFFENCES RELATING TO THE PRESS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
291	Possessing a Printing Press not having made and subscribed the declaration required by law.	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine to Rupees 5,000, or both.	
292	Printing or publishing any book, &c., without the name of the Printer and Publisher and the place of printing and publishing.	Idem -	Idem - - -	Idem.	
293	Printing, &c. any Newspaper, &c. contrary to law	Idem -	Idem - - -	Idem.	

CHAPTER XVIII.—OFFENCES AFFECTING THE HUMAN BODY.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
300	Murder - - - -	Not bailable -	High Court or Session Court	Death, or Transportation for life, or rigorous imprisonment for life, also liable to fine.	
301	Manslaughter - - - -	Idem -	Idem - - -	Imprisonment of either description to 14 years, or fine, or both.	
302	Voluntary culpable homicide by consent -	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
303	Voluntary culpable homicide in defence -	Idem -	Idem - - -	See Clause 301.	
304	Causing death by an act or illegal omission so rash or negligent as to indicate a want of due regard for human life.	Idem -	Idem - - -	Imprisonment of either description to 2 years, a fine, or both.	Additional, Clause 305.
306	Previous abetment by aid of Suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Idem -	Idem - - -	See Clause 300.	
307	Previously abetting by aid the commission of Suicide.	Idem -	Idem - - -	See Clause 302.	
308	Doing any act, &c. with such intention, &c. that if death ensued it would be murder, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem -	Idem - - -	Transportation for life, or rigorous imprisonment for life, or not less than 7 years, also liable to fine.	

309	Doing any act, &c. with such intention, &c. that if death ensued it would be voluntary culpable homicide, and carrying it to a length at the time contemplated as sufficient to cause death.	Idem	Idem	Imprisonment of either description to 3 years, or fine, or both.	
311	Being a Thug	Idem	Idem	Transportation for life, or imprisonment of either description for life, also liable to fine.	
	Causing Miscarriage.				
312	A woman causing herself to miscarry, or any person causing a woman to miscarry.	Bailable	High Court or Session Court	See Clause 309.	
313	Committing the offence in the last Clause without the woman's consent.	Not bailable	Idem	The punishment of miscarriage in excess of any punishment incurred by reason of any hurt caused to the woman.	
	Of Hurt.				
318	Causing hurt, except as in Clause 325	Bailable	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
319	Causing grievous hurt, except as in Clause 326	Not bailable	High Court or Session Court	Imprisonment of either description, maximum 10 years, minimum 6 months, also fine.	
320	Causing hurt in an attempt to commit murder	Idem	Idem	See Clause 308.	
321	Causing hurt for the purpose of extortion, &c.	Idem	Idem	Rigorous imprisonment maximum 14 years, minimum 1 year, also liable to fine.	
322	Causing grievous hurt for the purpose of extortion, &c.	Idem	Idem	See Clause 308.	
323	Causing hurt (except as in Clause 325) by a sharp instrument, or by fire, &c., or by any corrosive or, explosive substance, or by any substance deleterious to inhale or swallow, or by means of any animal.	Idem	Magistrate	See Clause 309.	

CHAPTER XVIII.—Offences affecting the Human Body—*continued*: Of Hurt—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable	5. Penalty.	6. When admitting of cumulative Punishment.
324	Causing grievous hurt (except as in Clause 326) by any of the means described in the last Clause.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
325	Causing hurt on grave and sudden provocation, not intending to hurt any other but the person who gave the provocation	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
326	Causing grievous hurt as in last Clause -	Idem -	High Court or Session Court	Imprisonment of either description to 1 year, or fine to Rupees 2,000, or both.	
327	Causing grievous hurt by an act or illegal omission so rash or negligent as to indicate a want of regard for the safety of others.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 1,000, or both.	Cumulative, Clause 328.
329	Any act or illegal omission intended, &c. to cause grievous hurt, the causing of which would be an offence other than that defined in Clause 326, and carrying it to a length at the time contemplated as sufficient to cause grievous hurt.	Not bailable -	Idem - -	Imprisonment of either description to half the term the offender would have been liable to, had he caused the grievous hurt intended, or fine, or both.	
	Wrongful Restraint and Confinement.				
332	Wrongfully restraining any person - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
333	Wrongfully confining any person - -	Idem -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	
334	Wrongfully confining for 3 days or more -	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
335	Wrongfully confining for 10 days or more -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, in addition to 3 days for every day of such wrongful confinement, minimum 6 months in addition to 1 day for every day of such wrongful confinement, also liable to fine.	

336	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Idem -	Idem - -	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any term of imprisonment to which the offender may be liable under Clause 335, also liable to fine.
337	Wrongful confinement for the purpose of extortion, &c.	Idem -	Idem - -	Imprisonment of either description, maximum 3 years, minimum 1 year, in addition to any imprisonment under either of the last two Clauses, also liable to fine.
338	*While keeping a person in wrongful confinement, omitting to furnish him with anything necessary to prevent danger of death or hurt.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine. or both.
			Assault.	
342	Assault otherwise than on grave and sudden provocation.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 500, or both.
343	Assault in attempt to commit murder - -	Not bailable -	High Court or Session Court	See Clause 308.
344	Assault in attempt to commit kidnapping -	Idem -	Idem - - -	Imprisonment of either description, maximum half the term of imprisonment for kidnapping, minimum 6 months, also liable to fine.
345	Assault in attempt to cause grievous hurt otherwise than on grave and sudden provocation.	Idem	Idem - - -	Imprisonment of either description to ½d the term for grievous hurt, or fine, or both.
346	Assault on a woman in attempt to commit rape -	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.
347	Assault on a woman with intent to outrage her modesty.	Bailable -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.
348	Assault on a person with intent to dishonour him otherwise than on grave or sudden provocation.	Idem -	Idem - - -	Imprisonment of either description to 2 years, or fine, or both.
349	Assault on a person in attempt to commit theft on any property he may be wearing or carrying.	Not bailable -	Idem - - -	Idem.
350	Assault on a person in attempt to wrongfully confine him.	Bailable -	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.

CHAPTER XVIII.—Offences affecting the Human Body—*continued*: Assault—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
351	Assault on a person on grave and sudden provocation given by that person.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 200, or both.	
352	Making show of assault except on grave and sudden provocation.	Idem -	Idem - - -	Idem.	
			Kidnapping.		
355	Kidnapping - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
356	Kidnapping intending or knowing that murder may be committed in consequence.	Idem -	Idem - - -	See Clause 308.	
357	Kidnapping intending or knowing that the consequence may be grievous hurt or rape, &c.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
358	Being in charge of a vessel and permitting a person to embark on board for a place not within the Company's Territories without a legal order or permit.	Bailable -	Magistrate - -	Simple imprisonment to 1 month for every person so embarked, or fine to Rupees 200 for every person, or both.	
			Rape.		
360	Rape - - - - -	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
			Unnatural Offences.		
361	Unnatural offences - - - -	Not bailable -	High Court or Session Court	See Clause 360.	
362	Unnatural offences without consent - -	Idem -	Idem - - -	Imprisonment of either description, maximum for life, minimum 7 years, also liable to fine.	

CHAPTER XIX.—OFFENCES AGAINST PROPERTY.

364	Theft - - - -	Not bailable -	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	Rigorous imprisonment to 3 years, or fine, or both.	
365	Theft within any building, tent, or vessel used as a human dwelling, or any building used for the custody of property, in pursuance of a conspiracy in which any person residing or employed within and any person not so residing or employed are engaged.	Idem -	Idem - - -	Rigorous imprisonment, maximum 3 years, minimum 6 months, also liable to fine.	
366	Theft on a letter or packet in possession of an Officer of the Post Office.	Idem -	Idem - - -	Idem.	
367	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing such theft, or to retiring after committing it, or to retaining property taken by it.	Idem -	High Court or Session Court	Rigorous imprisonment, maximum 7 years, minimum 1 year, also liable to fine.	
			Extortion.		
369	Extortion - - - -	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of the Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 3 years, or fine, or both.	
370	Putting or attempting to put in fear in order to extortion.	Idem -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
371	Extortion by putting a person in fear, for himself or for another, of death or grievous hurt.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	

CHAPTER XIX.—Offences against Property—*continued:* Extortion—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
372	Putting or attempting to put a person in fear, for himself or for another, of death or grievous hurt, in order to extortion.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
373	Extortion by putting a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust.	Idem -	Idem - - -	See Clause 371.	
374	Putting or attempting to put a person in fear of being falsely accused or defamed as a person under the influence of unnatural lust in order to extortion.	Idem -	Idem - - -	See Clause 372.	
			Robbery and Dacoity.		
377	Robbery - - - -	Not bailable -	High Court or Session Court	Rigorous imprisonment, maximum 14 years, minimum 2 years, also fine.	Cumulative, Clause 382. (377–379)
378	Attempt to commit robbery - - -	Idem -	Idem - - -	Rigorous imprisonment, maximum 7 years, minimum 1 year, also fine.	
379	Dacoity - - - - -	Idem -	Idem - -	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also fine.	
380	Murder in dacoity, where 6 or more engaged in committing it.	Idem -	Idem - - -	Death, or transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also fine.	
381	Being one of 6 or more persons assembled for dacoity.	Idem -	Idem - - -	See Clause 378.	
			Criminal Misappropriation of Property not in Possession.		
384	Criminal misappropriation of property not in possession.	Bailable -	Magistrate, as limited by Clauses 3, 4, and 5 of Article X. of Rules relating to "Criminal Courts of Original Jurisdiction."	Imprisonment of either description to 2 years, or fine, or both.	

385	Criminal misappropriation of property not in possession, knowing that it was in possession of a deceased person at his death, and has not since been in the possession of any person legally entitled to it.	Idem	Idem	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
	Criminal Breach of Trust.				
387	Criminal breach of trust	Bailable	High Court or Session Court	Imprisonment of either description to 3 years, or fine, or both.	
388	Criminal breach of trust by a public servant in the Post Office Department by misappropriating letters, &c. entrusted to him.	Idem	Idem	See Clause 385.	
	Receiving Stolen Property.				
390	Fraudulently receiving stolen property knowing it to be stolen.	Not bailable	High Court or Session Court, when the value of the property which is the subject of the offence exceeds 500 Rupees; Magistrate, when not exceeding 500 Rupees; Subordinate Criminal Courts, 1st Class, when not exceeding 100 Rupees; Subordinate Criminal Courts, 2d Class, when not exceeding 50 Rupees.	See Clause 387.	
391	Fraudulently receiving stolen property knowing it was obtained by dacoity.	Idem	High Court or Session Court	See Clause 379.	
	Cheating.				
394	Cheating	Bailable	Magistrate or Subordinate Criminal Courts 1st Class.	Imprisonment of either description to 1 year, or fine, or both.	
395	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Idem	Magistrate	Imprisonment of either description to 2 years, or fine, or both.	
396	Cheating by personation	Idem	Idem	Idem.	
397	Attempting to cheat by personation	Idem	Idem	See Clause 394.	

CHAPTER XIX.—Offences against Property—*continued:* Cheating—*continued.*

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. Wohen admi tting f cumulati ve Punishme nt.
	Fraudulent Insolvency.				
398	An Insolvent Trader fraudulently removing or concealing or delivering or transferring to any party any property to prevent the distribution of that property among his creditors.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
	Mischief.				
400	Mischief - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Fine to 10 times the wrongful loss thereby caused.	
401	Mischief, having taken precaution not to be detected.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine, or both.	
402	Mischief thereby causing wrongful loss to Rupees 5 or upwards.	Idem -	Idem - - - -	Idem.	
403	Mischief thereby causing wrongful loss to Rupees 100 or upwards.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
404	Mischief intending to enhance the value of any article, or to affect the event of any competition for the gain of any person.	Idem -	Idem - - - -	Idem.	
405	Mischief with intent to insult or annoy the person to whom wrongful loss is intended.	Idem -	Idem - - -	Idem.	
406	Mischief by killing, wounding, or poisoning any animal to the value of Rupees 10.	Idem -	Idem - - - -	Imprisonment of either description to 3 years, or fine, or both.	
407	Mischief on any channel or reservoir of water with intent, &c. to cause diminution of cultivation of agricultural produce, or a failing of the supply of water required for food, drink, &c., or for carrying on any manufacture.	Idem -	Idem - - -	Idem.	
408	Mischief on any road, bridge, or navigable channel with intent, &c. to render it less safe or easy to travel.	Idem -	Idem - - - -	Idem.	

409	Mischief with intent, &c. to cause an inundation attended with loss to Rupees 100 or upwards.	Idem -	Idem - - -	Idem.	
410	Mischief on any lighthouse or buoy with intent, &c. to render the same less useful.	Idem -	Idem - - - -	Idem.	
411	Mischief on any landmark with intent, &c. to render it less useful.	Idem -	Idem - - -	Imprisonment of either description to 1 year, or fine, or both.	
412	Mischief by fire with intent, &c. to destroy property not within a building to the value of Rupees 100 or upwards.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also liable to fine.	
413	Mischief by fire with intent, &c. to destroy any building used as a dwelling or for the custody of property.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 1 year, also liable to fine.	
414	Mischief by fire with intent, &c. that buildings used as dwellings to the number of 5 may be cousumed.	Idem -	Idem - - - -	Transportation for life, or rigorous imprisonment for life, or for not less than 7 years, also liable to fine.	
415	Mischief on any decked vessel with intent, &c. to destroy it or render it unsafe.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
416	Mischief, having made preparation for causing death, hurt, or wrongful restraint, or fear of death, hurt, or wrongful restraint, while committing or attempt to commit or retiring after committing such mischief.	Idem -	Idem - - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	Cumulative, Clause 417.

Criminal Trespass.

425	Criminal Trespass - - - -	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 500, or both.	
426	House Trespass - - - -	Not bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine to Rupees 1,000, or both.	Cumulative, Clause 427.
428	House Trespass in order to any offence punishable with death or transportation for life.	Idem -	High Court or Session Court	Transportation for life, or rigorous imprisonment for life, or for not less than 3 years, also liable to fine.	
429	House Trespass in order to any offence punishable with imprisonment.	Idem -	The High Court or Session Court, if the offence intended is triable by those Courts exclusively; otherwise by the Magistrate.	Imprisonment of either description to 1 year, added to ⅓d of the longest term for the offence intended, or fine, or both.	

CHAPTER XIX.—Offences against Property—*continued*: Criminal Trespass—*continued*.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
430	House Trespass, having made preparation for causing hurt, assault, &c.	Not bailable -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
	Lurking house trespass or house breaking -	Idem -	Idem - - -	Idem - - - - - -	Cumulative, Clause 432.
431 433	Lurking house trespass or house breaking in order to committing an offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 2 years, added to ½ the longest term of imprisonment for the offence intended, and not less than ½ the shortest term, also liable to fine.	
434	Lurking house trespass or house breaking, having made preparation for causing hurt or assault, &c.	Idem -	Magistrate - - -	Imprisonment of either description, maximum 3 years, minimum 3 months, also liable to fine.	
435	Lurking house trespass, &c. by night - -	Idem -	Idem - - -	Imprisonment of either description to 3 years, or fine, or both.	Cumulative, Clause 436.
437	Lurking house trespass, &c. by night, in order to any offence punishable with imprisonment.	Idem -	See 429 - - -	Imprisonment of either description to 3 years, added to ⅔ds of the longest term of imprisonment for the offence intended and not less than the shortest time, also liable to fine.	
438	Lurking house trespass, &c. by night having made preparation for causing hurt, &c.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 7 years, minimum 6 months, also fine.	
439	Criminal trespass by opening any closed receptacle for property so as to damage it, or by opening any lock.	Idem -	Magistrate - -	See Clause 430.	
440	Being entrusted by law or under a contract with any closed receptacle for property, committing criminal trespass by opening the same with a fraudulent intention by any means by which it is damaged, or by opening any lock.	Idem -	Idem - - -	See Clause 435.	

CHAPTER XX.—OFFENCES RELATING TO DOCUMENTS.

443	Committing Forgery, or using a forged document as genuine.	Not bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
444	Forging or falsifying a valuable security, or using the forged document as genuine.	Idem -	Idem - - -	Imprisonment of either description, maximum 14 years, minimum 2 years, also liable to fine.	
445	Forging a document, or using a forged document as genuine for the purpose of cheating.	Idem -	Idem - - -	Imprisonment of either description, maximum 7 years, minimum 1 year, also liable to fine.	
446	Forging a document, or using a forged document as genuine, to harm the reputation of any party.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also liable to fine.	
447	Making any apparatus or material for engraving, or any seal, for the purpose of committing forgery.	Idem -	Idem - - -	See Clause 444.	
448	Possessing any plate, or material, or implement for engraving, or any seal, for the purpose of forgery.	Idem -	Idem - -	Idem.	
449	Possessing any forged document purporting to be a valuable security intending that it may be used as genuine.	Idem -	Idem - - -	Idem.	
450	Possessing anything not a document, but which has been marked by forgery, intending that it may be made a document purporting to be a valuable security and may be used as genuine.	Idem -	Idem - -	Idem.	
451	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting a will.	Idem -	Idem - - -	Idem.	
452	Fraudulently destroying or defacing or secreting a valuable security.	Idem -	Idem - - -	See Clause 446.	
453	A public servant in the Post Office Department opening any letter, &c. containing any document, without legal authority.	Bailable -	Magistrate - -	Imprisonment of either description to 2 years, or fine, or both.	
454	Any person opening a fastened letter, &c. containing a document, knowing that it does not belong to him, &c.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CHAPTER XXI.—OFFENCES RELATING TO PROPERTY MARKS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
456	Making any counterfeit property mark, or using such as genuine.	Bailable -	Magistrate - - -	Imprisonment of either description to 1 year, or fine, or both.	
457	Counterfeiting any property mark affixed by the lawful authority of any public servant, or using such counterfeit as genuine to cause injury to some party.	Idem -	High Court or Session Court	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
458	Making or using any counterfeit property mark for the purpose of cheating.	Idem -	Magistrate - - -	Imprisonment of either description to 2 years, or fine, or both.	
459	Putting any property mark on any property, or using the same for the purpose of cheating.	Idem -	Idem - - -	See Clause 456.	

CHAPTER XXII.—ILLEGAL PURSUIT OF LEGAL RIGHTS.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
460	Taking property from a person, not fraudulently but to satisfy a just debt, under such circumstances that if the intention were fraudulent the act would be theft or robbery.	Bailable -	High Court or Session Court	Imprisonment of either description to 1 year, or fine, or both.	Cumulative, Clause 462.
461	Taking property as in the last Clause, and *keeping* the same *fraudulently*.	Idem -	Idem - - -	The punishment to which the offender would have been liable had the taking been fraudulent.	(Cumulative, Clause 462.)

CHAPTER XXIII.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

1. Clause.	2. Offence.	3. Whether bailable or not.	4. By what Court triable.	5. Penalty.	6. When admitting of cumulative Punishment.
463	Being bound by contract to convey or conduct any person or property from one place to another, and illegally omitting to do so.	Bailable -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
464	A Seaman bound to serve in a merchant vessel leaving it, or absenting himself from it, or disobeying the order of any officer thereof.	Idem -	Magistrate - -	Imprisonment of either description to 3 months, or fine to Rupees 100, or both.	
465	Being bound to attend on or supply the want of a person who is helpless from youth, unsoundness of mind, or disease, and illegally omitting to do so.	Idem -	Idem - - -	Imprisonment of either description to 6 months, or fine to Rupees 500, or both.	

CHAPTER XXIV.—OFFENCES RELATING TO MARRIAGE.

466	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Not bailable -	High Court or Session Court	Imprisonment of either description, maximum 14 years, minimum 2 years, also fine.	
467	A woman committing the same offence with a man.	Bailable -	Idem - - -	Simple imprisonment to 1 year, or fine, or both.	
468	A person with fraudulent intention going through the ceremony of being married knowing that he is not thereby lawfully married.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	

CHAPTER XXV.—DEFAMATION.

479	Defamation - - - -	Bailable -	High Court or Session Court	Simple imprisonment to 2 years, or fine, or both.	
480	Being the possessor of machinery by which defamatory matter has been printed or engraved at the time the printing or engraving was done.	Idem -	Idem - - -	Idem.	
481	Being the first seller of the printed or engraved substance by which defamation is committed.	Idem -	Idem - - -	Idem.	

CHAPTER XXVI.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

483	Criminal intimidation - - -	Bailable -	High Court or Session Court	Imprisonment of either description to 2 years, or fine, or both.	
484	Criminal intimidation, having taken precaution to conceal whence the threat comes.	Idem -	Idem - - -	Imprisonment of either description, maximum 3 years, minimum 6 months, also fine.	
485	Uttering any word, or making any sound or gesture, or exhibiting any object, to insult any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 3 months, or fine to Rupees 1,000, or both.	
486	Uttering any word, &c. to insult the modesty of any woman.	Idem -	Magistrate - -	See Clause 483.	
487	Uttering any word, &c. malignantly and wantonly to annoy any person.	Idem -	Magistrate or Subordinate Criminal Courts 1st and 2d Classes.	Imprisonment of either description to 1 month, or fine to Rupees 100, or both.	
488	Appearing in a public place, &c. in a state of intoxication, and causing annoyance to any person.	Idem -	Idem - - -	Simple imprisonment to 24 hours, or fine to Rupees 10, or both.	

We humbly submit this our Fourth Report to Your Majesty's Royal Consideration.

JOHN ROMILLY. (L.S.)

*

EDWARD RYAN. (L.S.)

C. H. CAMERON. (L.S.)

† JOHN M. MACLEOD. (L.S.)

T. F. ELLIS. (L.S.)

ROBERT LOWE. (L.S.)

Dated the 20th day of May 1856.

* See Letter from the Right Honourable the Lord Chief Justice of the Common Pleas, appended to this Report.

† See Minute by Mr. Macleod, appended to this Report.

LETTER from the Right Honourable Sir JOHN JERVIS, Lord Chief Justice of the Common Pleas.

My dear Sir, 47, Eaton Square, 22 May 1856.

I DECLINE to sign the Third and Fourth Reports of the Indian Law Commissioners. I consented to act as a Commissioner upon the express understanding that we were to endeavour to frame a Code of Procedure for all India, and with this understanding applied myself diligently to the subject, and, with the aid of the other Members of the Commission, succeeded in framing a Code which I believe is well calculated to meet the exigencies of the case, and which is certainly infinitely better than any that has been proposed by the authorities in India. If I had supposed that the Commission would be used to postpone legislation, and that the subject would ultimately be shelved by a reference to the Indian Government, I should not have consented to act; and considering that a slight has been cast upon the Commissioners by the course which has been taken, I decline to take any further part in the proceedings of the Commission.

I am yours, faithfully,
JOHN JERVIS.

N. B. Baillie, Esq.
Secretary, &c.

MINUTE by Mr. MACLEOD.

I AM under the necessity of dissenting from the recommendation of the majority of the Commissioners, that the Judges to be appointed by the Governor-General in Council to the bench of the proposed High Court at Madras shall be selected from the five stated classes of persons. My reasons are the same which, in a Minute appended to our First Report, I stated for objecting to the scheme of the majority for the constitution of a High Court at Calcutta.

I dissent also now, as I did in respect of the High Court proposed to be established at Calcutta, from the recommendation to enact a rule empowering the Chief Justice to determine from time to time "what and how many Judges of "the Court, whether with or without the Chief Justice, shall from time to time "constitute Courts of Appeal, and what and how many Judges, whether with "or without the Chief Justice, shall constitute Courts of Original Jurisdiction." Instead of giving this great power entirely to the Chief Justice, I think that it would be better to give it in the first instance to the collective body of the Judges, and ultimately to the Governor in Council, in accordance with the suggestion which I ventured to offer with reference to the High Court at Calcutta.

There is one part of our scheme of lower Criminal Judicatories which on mature consideration appears to me so objectionable that I feel it my duty to dissent from it, although I did not do so when I signed our First Report. I allude to the proposed rules determining who shall be the Judges of the proposed two classes of Subordinate Criminal Courts.

These rules are:—"First Assistants to the Magistrate and Principal Sudder "Ameens shall be Judges of Subordinate Criminal Courts of the First Class. "Second Assistants to the Magistrates and Moonsiffs shall be Judges of the "Subordinate Criminal Courts of the Second Class."

I think that it would be much better to make the Principal Sudder Ameens and the Moonsiffs respectively the only Judges of the two classes of Criminal Courts under the Courts of the Magistrate. Those two classes of Courts might then be better designated as the Criminal Court of the Principal Sudder Ameen and the Criminal Court of the Moonsiff. The Assistants to the Magistrates, I think, ought not to be by law constituted Judges of any Courts separate from the Court of the Magistrate. Whatever powers of Criminal Judicature they are employed to exercise they should exercise as Assistants to the Magistrate; and it should rest with the Government, or with the Magistrate if the Government delegate the duty to him, to determine from time to time, with respect to every Assistant, how much of the powers of the Magistrate he shall be authorized to exercise.

JOHN M. MACLEOD.

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